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**FIRST SUPPLEMENTAL  
INDENTURE OF TRUST**

**Dated as of October 1, 2010**

**By and Between the**

**CITY OF SAN JOSE FINANCING AUTHORITY**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$28,070,000  
Initial Principal Amount  
City of San José Financing Authority  
Taxable Lease Revenue Bonds, Series 2008E  
(Ice Centre Refunding Project)**

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## FIRST SUPPLEMENTAL INDENTURE OF TRUST

THIS FIRST SUPPLEMENTAL INDENTURE OF TRUST, dated as of October 1, 2010 (the "First Supplemental Indenture of Trust"), is by and between the CITY OF SAN JOSE FINANCING AUTHORITY (the "Authority"), a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Authority"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

### WITNESSETH:

**WHEREAS**, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City of San José (the "City") and the Redevelopment Agency of the City of San José (the "Agency"), and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to the Act to borrow money for the purpose, among other things, of financing and refinancing public capital improvements for the City and the Agency; and

**WHEREAS**, the Authority has heretofore determined to adopt and implement a program under which the Authority will provide financing and refinancing for certain public capital improvements for the City; and

**WHEREAS**, on July 3, 2008, pursuant to the Act and an Indenture of Trust dated as of July 1, 2008 (the "Original Indenture"), between the Authority and the Trustee, the Authority issued its \$28,070,000 City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E (Ice Centre Refunding Project) (the "Bonds") in order to refinance the City's acquisition and construction of an ice skating facility center, consisting of four ice skating rinks and related facilities; and

**WHEREAS**, concurrently with the delivery of the Bonds, the Authority and the City caused to be delivered to the Trustee an irrevocable direct-pay letter of credit (as more fully defined in the Original Indenture, the "Credit Facility") issued severally, but not jointly, by Bank of America, N.A., and the California State Teachers' Retirement System (as more fully defined in the Original Indenture, the "Credit Provider") in order to provide support for the payment of the principal of and interest on the Bonds, and the purchase price of the Bonds upon the optional or mandatory tender thereof; and

**WHEREAS**, the Authority and the City now desire to deliver to the Trustee an irrevocable direct-pay letter of credit issued by Bank of America, N.A., and an irrevocable direct-pay letter of credit issued by U.S. Bank National Association, in substitution for the Credit Facility initially delivered by the Credit Provider; and

**WHEREAS**, pursuant to Section 9.01(b)(viii) of the Original Indenture, the Authority now desires to supplement and amend the Original Indenture in order to revise certain provisions

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Item Number: 2(b)

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thereof to allow for the delivery of an Alternate Credit Facility on any date during a Daily Rate Period and a Weekly Rate Period (as such terms are defined in the Original Indenture) and for the delivery of two separate irrevocable direct-pay letters of credit from two different banks as credit and liquidity support for the Bonds; and

**WHEREAS**, the execution and delivery of this First Supplemental Indenture of Trust have been duly approved and authorized by resolution of the Governing Board of the Authority;

**NOW, THEREFORE**, the parties hereto, in consideration of the premises and the mutual covenants and commitments of the parties set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, hereby agree as follows:

## AGREEMENT

**Section 1. Additional Definitions.** The following defined terms are added to Section 1.01 of the Original Indenture, and made a part thereof:

"First Supplemental Indenture of Trust" means the First Supplemental Indenture of Trust dated as of October 1, 2010 between the Authority and the Trustee.

"Series" or "Series of Bonds" means the Series 2008E-1 Bonds or the Series 2008E-2 Bonds, as applicable.

"Series 2008E-1 Bonds" means the City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-1 (Ice Centre Refunding Project), \$13,015,000 of which are outstanding as of the date of this First Supplemental Indenture of Trust.

"Series 2008E-2 Bonds" means the City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-2 (Ice Centre Refunding Project), \$13,010,000 of which are outstanding as of the date of this First Supplemental Indenture of Trust.

"Series 2008E-1 Remarketing Agent" means Citigroup Global Markets Inc., as remarketing agent for the Series 2008E-1 Bonds, and its successors and assigns.

"Series 2008E-1 Remarketing Agreement" means the Amended and Restated Remarketing Agreement dated as of October \_\_, 2010, between the Authority and the Series 2008E-1 Remarketing Agent, as such agreement may from time to time be supplemented, modified or amended and any other similar agreement or agreements entered into with any successor Series 2008E-1 Remarketing Agent. No such supplement, modification or amendment or similar agreement shall alter the rights or obligations of the Owners or Beneficial Owners of the Series 2008E-1 Bonds to deliver their Series 2008E-1 Bonds for purchase as provided herein.

"Series 2008E-2 Remarketing Agent" means Citigroup Global Markets Inc., as remarketing agent for the Series 2008E-2 Bonds, and its successors and assigns.

"Series 2008E-2 Remarketing Agreement" means the Amended and Restated Remarketing Agreement dated as of October \_\_, 2010, between the Authority and the Series 2008E-2 Remarketing Agent, as such agreement may from time to time be supplemented, modified or amended and any other similar agreement or agreements entered into with any successor Series 2008E-2 Remarketing Agent. No such supplement, modification or amendment or similar agreement shall alter the rights or obligations of the Owners or Beneficial Owners of the Series 2008E-2 Bonds to deliver their Series 2008E-2 Bonds for purchase as provided herein.

**Section 2. Amended Definitions.** The following defined terms set forth in Section 1.01 of the Original Indenture are hereby revised as follows:

"Alternate Credit Facility" means any letter of credit, committed line of credit, bond purchase agreement, surety bond, bond insurance policy or other instrument, or any combination thereof, under the terms of which the Trustee is authorized to receive payment of an amount sufficient to pay when and as due hereunder, (a) the principal of a Series of Bonds, (b) the interest on a Series of Bonds, and (c) the Purchase Price of a Series of Bonds upon the optional or mandatory tender thereof, including the principal amount and accrued interest thereon to the purchase date to the extent required to be paid hereunder.

"Available Moneys" means (1) moneys derived from payments under a Credit Facility or a Liquidity Facility and not commingled with any other funds; (2) any moneys on deposit with the Trustee pursuant to this Indenture for a period of one hundred twenty-three (123) consecutive days and not commingled with any moneys so held for less than said period, during which no petition in bankruptcy under the United States Bankruptcy Code has been filed by or against the Authority or the City; (3) investment income derived from the investment of moneys described in clause (1) or (2); (4) moneys as to which the Trustee has received an opinion of bankruptcy counsel acceptable to the Authority, Moody's and Fitch to the effect that the contemplated disbursement thereof pursuant to this Indenture will not be recoverable under Section 547 or 550 of the United States Bankruptcy Code; or (5) if a Credit Facility is not then in effect with respect to the related Series of Bonds, any legally available funds of the Authority or the City.

"Bonds" means, together, the Series 2008E-1 Bonds and the Series 2008E-2 Bonds.

"Conversion Date" means, with respect to each Series of Bonds, a Variable Rate Conversion Date or the Fixed Rate Conversion Date.

"Credit Agreement" means, as of October \_\_, 2010, with respect to the Series 2008E-1 Bonds, the Letter of Credit Reimbursement Agreement dated as of October 1, 2010, by and among the City, the Authority and Bank of America, N.A., and, with respect to the Series 2008E-2 Bonds, the Letter of Credit Reimbursement Agreement dated as of October 1, 2010, by and among the City, the Authority and U.S. Bank National Association, and any similar agreement or with respect to any Alternate Credit Facility and, if applicable, a standby bond purchase agreement relating to a separate Liquidity Facility, in each case as such agreement is originally executed or as it may from time to time be supplemented, modified or amended in accordance with its terms.

"Credit Facility" means, when used with respect to the Series 2008E-1 Bonds, the irrevocable direct-pay letter of credit relating to the Series 2008E-1 Bonds provided by Bank of America, N.A. and, when used with respect to the Series 2008E-2 Bonds, the irrevocable direct-pay letter of credit relating to the Series 2008E-2 Bonds provided by U.S. Bank National Association, both dated October \_\_, 2010 (which letters of credit

also constitute Liquidity Facilities), or any Alternate Credit Facility. There may also be at any one time a Credit Facility providing credit support of one or both Series of Bonds and a separate Credit Facility providing liquidity for one or both Series of Bonds (i.e., a Liquidity Facility). Additionally, there may be at any one time a different Credit Facility for each Series of Bonds. Further, there may be, at the times and upon the circumstances provided in this Indenture, only a Liquidity Facility in effect or no Credit Facility or Liquidity Facility in effect.

"Credit Provider" means, with respect to the Series 2008E-1 Bonds, Bank of America, N.A., and with respect to the Series 2008E-2 Bonds, U.S. Bank National Association, and any other financial institution or institutions issuing an Alternate Credit Facility then in effect. All references to the Credit Provider in this Indenture and the Credit Provider in the Project Lease shall be of no force and effect whatsoever during any period of time during which (a) the Credit Facility shall have expired in accordance with its terms and been returned to the Credit Provider for cancellation, or the Trustee shall have otherwise released the Credit Provider from liability thereunder and all of the reimbursement obligations of the Authority to the Credit Provider shall have been paid, or (b) the Credit Provider shall have wrongfully dishonored a draw on the Credit Facility.

"Daily Rate" means an interest rate that is determined for a Series of Variable Rate Bonds on each Business Day pursuant to Section 2.03(b).

"Daily Rate Conversion Date" means the day on which interest on a Series of Variable Rate Bonds begins to accrue at a Daily Rate following conversion from a different Variable Rate pursuant to Section 2.03(h).

"Daily Rate Period" means each period during which interest on a Series of Variable Rate Bonds is payable or is accrued at a Daily Rate.

"Fixed Rate" means an interest rate or rates borne by a Series of the Bonds from and after the Fixed Rate Conversion Date and determined in accordance with Section 2.03(i).

"Fixed Rate Bonds" means a Series of Bonds that bear interest at a Fixed Rate.

"Fixed Rate Conversion Date" means the date on which a Series of Variable Rate Bonds begin to bear interest at the Fixed Rate following conversion from a Variable Rate pursuant to Section 2.03(i).

"Flexible Rate" means an interest rate that is determined for a Series of Variable Rate Bonds pursuant to Section 2.03(e).

"Flexible Rate Conversion Date" means the day on which interest on a Series of Variable Rate Bonds begins to accrue at a Flexible Rate following conversion from a different Variable Rate pursuant to Section 2.03(h).

"Flexible Rate Period" means each period during which interest on a Series of Variable Rate Bonds is payable or is accrued at a Flexible Rate.

"Indenture" means the Indenture of Trust dated as of July 1, 2008, between the Authority and the Trustee, as supplemented and amended by the First Supplemental Indenture of Trust dated as of October 1, 2010 between the Authority and the Trustee, and as it may from time to time be further supplemented, modified or amended by any Supplemental Indenture.

"Interest Payment Date" means, (i) when used with respect to a Series of Bonds bearing interest at a Daily Rate, a Weekly Rate or a Monthly Rate, the first Business Day of each month, the maturity date thereof, and, with respect to a Series of Bonds bearing interest at a Daily Rate or a Weekly Rate, any date on which such Series of Bonds are subject to mandatory tender for purchase pursuant to Section 4.06(d)(ii), Section 4.06(d)(iii) or Section 4.06(d)(iv) hereof; (ii) when used with respect to a Series of Bonds bearing interest at a Flexible Rate, the Business Day following each Rate Period and the maturity date thereof; (iii) when used with respect to a Series of Bonds bearing interest at a Semiannual Rate, a Long Rate or a Fixed Rate, June 1 and December 1 of each year, commencing on the first June 1 or December 1 which is at least two months after the applicable Conversion Date, provided that such dates may be changed by the Authority upon any conversion to a Semiannual Rate, a Long Rate or a Fixed Rate; and (iv) when used with respect to Bank Bonds, any date on which any interest on the Bank Bonds is due under the Credit Agreement.

"Interest Payment Period" means, (i) with respect to a Series of Bonds bearing interest at a Daily Rate, Weekly Rate or Monthly Rate, the period from and including the first Business Day of each month (with the exception of the first Interest Payment Period following the Closing Date or conversion of the Series of Bonds to a Daily Rate, Weekly Rate or Monthly Rate, which commences on the Closing Date or Conversion Date, as applicable) to and including the day before the first Business Day of the next month (except in the event of a conversion to a Semiannual Rate, a Long Rate or a Fixed Rate, in which event to and including the last day of such month); (ii) with respect to a Series of Bonds bearing interest at a Flexible Rate, Semiannual Rate, Long Rate or Fixed Rate, the period from and including each Interest Payment Date (with the exception of the first Interest Payment Period following the Closing Date or conversion from a Daily Rate, Weekly Rate, Monthly Rate or Flexible Rate, which commences on the Closing Date or the Conversion Date, as applicable) to and including the day immediately preceding the next succeeding Interest Payment Date; and (iii) with respect to Bank Bonds, the interest periods identified as such in the Credit Agreement.

"Liquidity Facility" means any irrevocable instrument (or combination of irrevocable instruments) that is issued by a commercial bank, a commercial insurer or other financial institution (and which may be part of a Credit Facility providing credit support for the Bonds), that provides (or in the aggregate provide) for draws or claims for the purpose of paying the purchase price of tendered Variable Rate Bonds of a Series in an aggregate amount at least equal to the Required Stated Amount. The irrevocable direct-pay letter of credit with respect to the Series 2008E-1 Bonds delivered by Bank of America, N.A. on October \_\_, 2010 and the irrevocable direct-pay letter of credit with respect to the Series 2008E-2 Bonds delivered by U.S. Bank National Association on October \_\_, 2010 as Alternate Credit Facilities also constitute Liquidity



Facilities. Such instrument may be (or instruments may include) a letter of credit, insurance policy, surety bond, line of credit, standby bond purchase agreement, acceptance, guarantee or other instrument. Any Liquidity Facility may be subject to termination prior to its scheduled expiration date upon (1) the issuance of a substitute Liquidity Facility, (2) upon payment of the Series of Bonds supported by a Liquidity Facility in full or upon provision for such payment in accordance with Article X of this Indenture, (3) the Fixed Rate Conversion Date or (4) an Event of Termination.

"Liquidity Provider" means any financial institution issuing a Liquidity Facility with respect to Variable Rate Bonds of a Series, and its successors and assigns. As of October \_\_, 2010, Bank of America, N.A., will be the Liquidity Provider for the Series 2008E-1 Bonds and U.S. Bank National Association, will be the Liquidity Provider with respect to the Series 2008E-2 Bonds.

"Long Rate" means an interest rate that is determined for a Series of Variable Rate Bonds on the basis of a term of one year or more pursuant to Section 2.03(g).

"Long Rate Conversion Date" means the day on which interest on a Series of Variable Rate Bonds begins to accrue at a Long Rate following conversion from a different Variable Rate pursuant to Section 2.03(h).

"Long Rate Period" means each period during which interest on a Series of Variable Rate Bonds is payable or is accrued at a Long Rate.

"Mandatory Tender Date" means the date on which a Series of Variable Rate Bonds are subject to mandatory tender for purchase pursuant to Section 4.06(d).

"Mandatory Tender Notice" means notice of any mandatory tender of any Variable Rate Bonds of a Series pursuant to Section 4.06(d), which notice satisfies the requirements of Section 4.06(j).

"Maximum Interest Rate" means (i) with respect to a Series of Bonds other than Bank Bonds, twelve percent (12%) per annum, (ii) with respect to Bank Bonds, the maximum rate specified in the Credit Agreement, or (iii) such other rate or rates as may be specified for a Series of Bonds by the Authority in writing to the Trustee accompanied by written confirmations from the Credit Provider and the Liquidity Provider, if such Bonds are Variable Rate Bonds, that the amount available to be drawn under the Credit Facility or the Liquidity Facility, as applicable, is at least equal to the Required Stated Amount calculated after such change in the Maximum Interest Rate.

"Monthly Rate" means an interest rate that is determined for a Series of Variable Rate Bonds on a monthly basis pursuant to Section 2.03(d).

"Monthly Rate Conversion Date" means the day on which interest on a Series of Variable Rate Bonds begins to accrue at a Monthly Rate following conversion from a different Variable Rate pursuant to Section 2.03(h).

"Monthly Rate Period" means each period during which interest on a Series of Variable Rate Bonds is payable or is accrued at a Monthly Rate.

"Optional Tender Date" means any date on which a Bond of a Series bearing interest at a Daily Rate, a Weekly Rate or a Monthly Rate is tendered for purchase pursuant to Section 4.06(a).

"Optional Tender Notice" means written irrevocable notice from the Owner of any Series of Bond bearing interest at a Daily Rate, a Weekly Rate or a Monthly Rate meeting the requirements of Section 4.06(b).

"Outstanding" means, when used as of any particular time with reference to a Series of Bonds, (subject to the provisions of Section 11.08) all Bonds of such Series theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except (a) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Bonds (or portions of Bonds) disqualified under Section 11.08, but not including Bonds paid by the Credit Provider as provided in Section 10.02; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

"Rate Period" means the period during which a particular rate of interest determined for a Series of Variable Rate Bonds is to remain in effect pursuant to Section 2.03 hereof.

"Rating Agency" means, severally, Moody's, S&P and Fitch so long as each such organization maintains a rating on the applicable Series of Bonds.

"Remarketing Agent" or "Remarketing Agents" means the Series 2008E-1 Remarketing Agent and the Series 2008E-2 Remarketing Agent, as appropriate.

"Remarketing Agreement" means the Series 2008E-1 Remarketing Agreement or the 2008B-2 Remarketing Agreement, as appropriate.

"Required Stated Amount" means, with respect to the Credit Facility and the Liquidity Facility, at any time of calculation, an amount equal to the aggregate principal amount of all Bonds of a Series then Outstanding for which the Credit Facility (or Liquidity Facility) provides credit or liquidity support, together with interest accruing thereon, which, with respect to the Credit Facility and the Liquidity Facility, if applicable, shall be calculated based on the actual interest rate on a Series of Fixed Rate Bonds and, with respect to a Series of Variable Rate Bonds, on an annual rate of interest equal to the Maximum Interest Rate for the number of days required by each Rating Agency in order to obtain the rating on a Series of Bonds normally obtained with respect to bonds and other obligations supported by such Credit Provider's or Liquidity Provider's Credit Facility or Liquidity Facility.

"Semiannual Rate" means an interest rate that is determined for a Series of Variable Rate Bonds on a semiannual basis pursuant to Section 2.03(f).

"Semiannual Rate Conversion Date" means the day on which interest on a Series of Variable Rate Bonds begins to accrue at a Semiannual Rate following conversion from a different Variable Rate pursuant to Section 2.03(h).

"Semiannual Rate Period" means each period during which interest on a Series of Variable Rate Bonds is payable or is accrued at a Semiannual Rate.

"Special Record Date" means the date established by the Trustee pursuant to Section 2.02(c)(i) as a record date for the payment of defaulted interest on a Series of Bonds, if any.

"Termination Date" means, while a Series of Bonds is supported by a Liquidity Facility, (i) the date specified in a notice of termination given by the Liquidity Provider to the Trustee specifying the date on which such Liquidity Provider will no longer be obligated to purchase such Series of Bonds (or otherwise advance funds for the purchase of such tendered Series of Bonds) pursuant to the Liquidity Facility, which date shall be at least thirty (30) days from the date of receipt of such notice by the Trustee and (ii) the Stated Expiration Date of the Liquidity Facility if no Substitute Liquidity Facility is delivered prior to such date. "Termination Date" does not include the date of termination of the Liquidity Facility following an Event of Termination.

"Variable Rate Bonds" means a Series of Bonds bearing interest at a Variable Rate in accordance with the terms of this Indenture.

"Variable Rate Conversion Date" means (i) the date on which interest with respect to a Series of Variable Rate Bonds begins to accrue at a Variable Rate other than the Variable Rate previously borne by such Series of Bonds following conversion from such previous Variable Rate (e.g., the Interest Payment Date on which the Series of Bonds begin to bear interest at a Daily Rate following a Weekly Rate Period), and (ii) with respect to a Long Rate Period, the first day that a particular Long Rate becomes effective that is for a duration that is different from the duration of the prior Long Rate.

"Variable Rate Period" means each period during which interest on a Series of Variable Rate Bonds is payable at a specific Variable Rate.

"Weekly Rate" means an interest rate that is determined for a Series of Variable Rate Bonds on a weekly basis pursuant to Section 2.03(c).

"Weekly Rate Conversion Date" means the day on which interest on a Series of Variable Rate Bonds begins to accrue at a Weekly Rate following conversion from a different Variable Rate pursuant to Section 2.03(h).

"Weekly Rate Period" means the period during which interest on a Series of Variable Rate Bonds is payable or is accrued at a Weekly Rate.

**Section 3. Amendment of Section 2.01 of the Original Indenture.** Section 2.01 of the Original Indenture is hereby amended in its entirety to read as follows:

The Authority hereby authorizes the issuance of the Bonds hereunder, which shall constitute special obligations of the Authority, for the purpose of providing moneys to refinance the Project. Such Bonds are hereby designated the "City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E (Ice Centre Refunding Project)". The initial aggregate principal amount of Bonds issued and Outstanding under this Indenture shall equal \$28,070,000. This Indenture constitutes a continuing agreement of the Authority with the Trustee and the Owners from time to time of the Bonds to secure the full payment of the principal of, premium, if any, and interest on all of the Bonds, subject to the covenants, provisions and conditions herein contained.

From and after October \_\_, 2010, the Bonds shall be re-designated as the "City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-1 (Ice Centre Refunding Project)" (the "Series 2008E-1 Bonds"), \$13,015,000 of which are outstanding as of such date, and the "City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-2 (Ice Centre Refunding Project)" (the "Series 2008E-2 Bonds"), \$13,010,000 of which are outstanding as of such date.

**Section 4. Amendment of Section 2.02 of the Original Indenture.** Section 2.02 of the Original Indenture is hereby amended in its entirety to read as follows:

(a) The Bonds shall be issued in fully registered form without coupons in any Authorized Denomination. The Bonds shall be dated the Closing Date, and the Series 2008E-1 Bonds shall mature (subject to prior redemption) on June 1, 2025 and the Series 2008E-2 Bonds shall mature (subject to prior redemption) on June 1, 2025. In the event of conversion of interest on a Series of Bonds to a Fixed Rate pursuant to Section 2.03(i), such Series of Bonds shall mature serially on June 1 in each year, in an amount for each year equal to the principal amount which would otherwise be required to be redeemed from sinking fund payments pursuant to Section 4.01(c); *provided, however,* that in the event the Remarketing Agent shall certify to the Authority and the Trustee that the Authority will realize net present value savings by retaining any one or more maturities of such Series of Bonds as a term maturity subject to mandatory sinking fund redemption pursuant to Section 4.01(c), such maturities shall not be represented by serial maturities but shall continue to mature on June 1, 2025, or such other date that the Remarketing Agent determines, subject to mandatory sinking fund redemption pursuant to Section 4.01(c). Notwithstanding anything herein to the contrary, principal of and interest on any Bank Bonds shall be payable as set forth in the Credit Agreement.

(b) (i) The rate of interest on a Series of Bonds shall be calculated at Variable Rates prior to the Fixed Rate Conversion Date, if any, for such Series of Bonds, and at the applicable Fixed Rate or Fixed Rates thereafter; except that the rate of interest on any Bank Bond shall be calculated at the Bank Rate, and interest on the Bank Bonds shall be paid as set forth in the Credit Agreement. During any period of

time during which a Bond is not a Bank Bond, interest on such Bond shall be calculated at a Variable Rate or the applicable Fixed Rate, in each case determined as provided herein, and the Owner thereof shall not be entitled to receive interest on such Bond at any rate other than the applicable Variable Rate or Rates or the applicable Fixed Rate during such period.

(ii) Notwithstanding any other provision hereof, the interest payments on the Bonds which result from the determination of the interest rates pursuant to Section 2.03, together with the regularly scheduled principal or mandatory sinking fund redemption payments due hereunder, shall be paid in full before amounts on deposit in the funds and accounts hereunder are used to pay interest on Bank Bonds which is in excess of the interest owing on the Bonds determined in accordance with Section 2.03, or to otherwise pay amounts due to the Credit Provider and to the Liquidity Provider under the Credit Agreement. Additionally, such additional interest and other amounts shall be paid (to the extent of available funds hereunder) by the Trustee directly to the Credit Provider or the Liquidity Provider or their nominees or registered assigns, as applicable, and not through the Depository.

(c) (i) Interest on all of the Bonds shall be payable from the Interest Payment Date next preceding the date of authentication thereof unless (x) a Bond is authenticated following a Record Date and on or before the next succeeding Interest Payment Date, in which event interest thereon shall be payable from such Interest Payment Date, or (y) a Bond is authenticated on or before the first Record Date, in which event interest thereon shall be payable from the Closing Date, or (z) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon shall be payable from the date to which interest has been paid in full. Interest shall be paid on each Interest Payment Date and redemption date to the persons in whose names the ownership of the Bonds is registered at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for when due shall be payable to the person in whose name the ownership of such Bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Trustee, notice of which shall be given to such Owner not less than three (3) days prior to such Special Record Date.

(ii) Interest shall be paid by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to each person in whose name the ownership of a Bond shall be registered as of the immediately preceding Record Date, at the respective addresses shown on the registration books as of the immediately preceding Record Date; *provided, however*, that (1) amounts payable to the Credit Provider with respect to the reimbursement of draws on the Credit Facility shall be transmitted by wire transfer to the Credit Provider, (2) except as provided below in the next paragraph, amounts payable with respect to any Bank Bonds shall be transmitted by wire transfer to the Liquidity Provider or its nominees or registered assigns in accordance with the Credit Agreement, and (3) at the written request of any Owner of Bonds in an aggregate principal amount of at least one million dollars (\$1,000,000), which written request shall be on file with the Trustee as of the Record Date immediately preceding any Interest Payment Date, interest on such Bonds shall be payable on such

Interest Payment Date by wire transfer to such bank account within the United States as shall be specified (to the satisfaction of the Trustee) in such written request. All payments made to the Credit Provider or the Liquidity Provider or the nominees thereof or registered assigns shall be paid without set-off or counterclaim and in such amounts as may be necessary in order that all such payments shall be not less than the amounts otherwise required to be paid (in the case of the Liquidity Provider or its nominees or registered assigns, by the provisions of the Credit Agreement).

If for any reason, the Bank Bonds remain in book-entry and are not assigned a separate CUSIP number, the Trustee shall pay the principal of, prepayment premium, if any, and interest with respect to the Bonds (including the Bank Bonds) computed at the Basic Bond Rate; and the Authority shall pay to the Trustee for payment to the Liquidity Provider outside the book-entry system the remainder of (i) the interest then due with respect to Bank Bonds computed at the applicable Bank Rate minus (ii) the interest that would then be due with respect to Bank Bonds if such interest were computed at the Basic Bond Rate.

(iii) The amount of interest payable on any Interest Payment Date shall be computed (1) on the basis of a 365 or 366 day year, as applicable, for the number of days actually elapsed during a Daily Rate Period, a Weekly Rate Period, a Monthly Rate Period or a Flexible Rate Period; (2) on the basis of a 360 day year consisting of twelve 30 day months while the Bonds bear interest at a Fixed Rate or Rates or during a Semiannual Rate Period or a Long Rate Period; and (3) as provided in the Credit Agreement with respect to Bank Bonds.

(iv) Except as provided in Section 2.03(e) with respect to Variable Rate Bonds bearing interest at a Flexible Rate, all of the Bonds of a Series (but not all Series of Bonds) shall be in the same Rate Period at all times. In no event shall the interest rate on the Bonds exceed the Maximum Interest Rate.

(d) The principal of the Bonds (other than principal payable as the purchase price of tendered Bonds) and premium, if any, shall be payable in lawful money of the United States of America upon surrender thereof at the Corporate Trust Office of the Trustee.

(e) The Bonds shall be subject to redemption prior to maturity as provided in Article IV.

**Section 5. Amendment of Section 2.03 of the Original Indenture.** Section 2.03 of the Original Indenture is hereby amended in its entirety to read as follows:

(a) Determination by Remarketing Agent. The interest rate applicable to a Series of Bonds during any Variable Rate Period shall be determined by the Remarketing Agent, and notice thereof shall be given, as follows:

(i) The interest rate for such Variable Rate Period shall be determined by the Remarketing Agent on the date or dates and at the time or times required pursuant to subsections (b), (c), (d), (e), (f) or (g) below, whichever is applicable.

(ii) The interest rate to be determined shall be the lowest rate of interest not in excess of the Maximum Interest Rate that, in the judgment of the Remarketing Agent, would cause such Series of Bonds to have a market value equal to the principal amount thereof, plus accrued interest, under prevailing market conditions as of the date of determination. If a Remarketing Agent fails for any reason to determine or notify the Trustee of the interest rate for any Variable Rate Period when required hereunder, or if any interest rate for any Variable Rate Period is determined by a court of competent jurisdiction to be invalid or unenforceable, and if the Variable Rate Period for which such interest rate is to be in effect is less than or equal to six months, the interest rate for such Variable Rate Period shall be with respect to such Series of Bonds, the lesser of (A) the Maximum Interest Rate or (B) the Reference Rate. If the index ceases to be published, it shall be replaced, as provided in the definition of Reference Rate, by a comparable published index designated in writing by the applicable Remarketing Agent, upon consultation with the Authority, with notice being given in writing to the Trustee, the Credit Provider and the Liquidity Provider.

(iii) Notice of each interest rate (or rates in the case of a Daily Rate) shall be given by the Remarketing Agent to the Trustee, the Credit Provider, the Liquidity Provider and the City by Electronic Means (or such other means of communication as may be agreed to by the various parties) (i) not later than 1:00 p.m., New York City time, on the effective date of such rate in the case of a Flexible Rate, (ii) not later than 12:00 o'clock noon, New York City time, on the Business Day next succeeding the date of determination and, if a date of determination is the last Business Day of an Interest Payment Period, on such date of determination in the case of a Weekly Rate, (iii) not later than 12:00 o'clock noon, New York City time, on Friday of each week and on the last Business Day of each Interest Payment Period in the case of a Daily Rate, or (iv) not later than 5:00 p.m., New York City time on the date of determination in the case of a Monthly Rate, a Semiannual Rate, a Long Rate or a Fixed Rate. The Trustee shall inform the Owners of each Series of Bonds of the rate determined upon request.

(iv) All determinations of interest rates pursuant to this Section shall be conclusive and binding upon the Authority, the Trustee, the Credit Provider, the Liquidity Provider and the Owners of the Bonds. The Authority, the Trustee, the Credit Provider, the Liquidity Provider and the Remarketing Agent shall not be liable to any Owners for failure to give any notice required above or for failure of any Owners to receive any such notice.

(b) Daily Rates.

(i) Rate Period. Whenever a Series of Bonds is to bear interest at a Daily Rate, Daily Rate Periods shall commence on each Business Day, the first such Business Day being the Daily Rate Conversion Date, and shall extend to, but not include, the next succeeding Business Day.

(ii) Effective Period. The interest rate for each Daily Rate Period shall be effective from and including the commencement date thereof and shall remain in effect to, but not including, the next succeeding Business Day.

(iii) Determination Time. Each such interest rate shall be determined by the applicable Remarketing Agent not later than 10:00 a.m., New York City time, on the commencement date of the Daily Rate Period to which it relates.

(c) Weekly Rates.

(i) Rate Period. Whenever a Series of Bonds is to bear interest at a Weekly Rate, Weekly Rate Periods shall commence on Wednesday of each week and end on Tuesday of the following week; provided, however, that (A) in the case of a conversion to a Weekly Rate from a different Variable Rate, the initial Weekly Rate Period for such Bonds shall commence on the Weekly Rate Conversion Date and end on the next succeeding Tuesday, and (B) in the case of a conversion from a Weekly Rate to a different Variable Rate or to the Fixed Rate, the last Weekly Rate Period prior to conversion shall end on the last day immediately preceding the Conversion Date.

(ii) Effective Period. The interest rate for each Weekly Rate Period shall be effective from and including the commencement date of such period and shall remain in effect through and including the last day thereof.

(iii) Determination Time. Each such interest rate shall be determined by the Remarketing Agent not later than 9:30 a.m., New York City time, on the commencement date of the Weekly Rate Period to which it relates or, if such date is not a Business Day, on the preceding Business Day.

(d) Monthly Rates.

(i) Rate Period. Whenever a Series of Bonds is to bear interest at a Monthly Rate, the Monthly Rate Periods shall commence on the Monthly Rate Conversion Date, which shall be the first Business Day of a calendar month, subject to the provisions of subsection (h) of this Section, and end on the day immediately preceding the first Business Day of the next calendar month.

(ii) Effective Period. The interest rate for each Monthly Rate Period shall be effective from and including the commencement date thereof and shall remain in effect through and including the last day thereof.

(iii) Determination Time. Each such interest rate shall be determined by the Remarketing Agent not later than 4:00 p.m., New York City time, on a Business Day not earlier than the fifteenth (15th) day of the month preceding the commencement of the Monthly Rate Period, nor later than the last Business Day immediately preceding the commencement of the Monthly Rate Period.



(e) Flexible Rates.

(i) Rate Period. Whenever a Series of Bonds is to bear interest at a Flexible Rate, the Authority shall determine the period or periods of not less than one (1) day nor more than three hundred sixty-five (365) days that shall constitute the Flexible Rate Period for such Series of Bonds and shall give notice thereof pursuant to paragraph (h)(ii) of this Section. Flexible Rate Periods shall commence on a Flexible Rate Conversion Date, which shall be the first Business Day of a calendar month, subject to subsection (h) (i) of this Section, and end on the last day of the Flexible Rate Period. A Variable Rate Bond bearing interest at a Flexible Rate can have a different Rate Period, and may bear interest at a different Variable Rate, than another Variable Rate Bond bearing interest at a Flexible Rate.

(ii) Effective Period. The interest rate for each Flexible Rate Period shall be effective from and including the commencement date thereof and shall remain in effect through and including the last day thereof.

(iii) Determination Time. Each such interest rate shall be determined by the Remarketing Agent by not later than 1:00 p.m., New York City time, on the commencement date of the Flexible Rate Period.

(f) Semiannual Rates.

(i) Rate Period. Whenever a Series of Bonds is to bear interest at a Semiannual Rate, Semiannual Rate Periods shall commence initially on the Semiannual Rate Conversion Date, which shall be a June 1 or December 1, subject to the provisions of subsection (h) of this Section, and on each June 1 and December 1 thereafter; and end on the November 30 following such June 1 or the May 31 following such December 1, as the case may be.

(ii) Effective Period. The interest rate for each Semiannual Rate Period shall be effective from and including the commencement date of such Semiannual Rate Period and shall remain in effect through and including the last day thereof.

(iii) Determination Time. Each such interest rate shall be determined by the Remarketing Agent not later than 4:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of the Semiannual Rate Period.

(g) Long Rates.

(i) Rate Period. Whenever a Series of Bonds is to bear interest at a Long Rate, the Authority shall determine the period in excess of three hundred sixty-five (365) days that shall constitute such Long Rate Period and shall give notice thereof pursuant to paragraph (h)(ii) of this Section. Long Rate Periods shall commence initially on the Long Rate Conversion Date, which shall be the first Business Day of a calendar month,

subject to the provisions of subsection (h) of this Section, and end on the day preceding a June 1 or a December 1. Subsequent Long Rate Periods shall begin on a June 1 or a December 1 and shall be for a term of one year or any integral multiple of six months in excess of one year.

(ii) Effective Period. The interest rate for each Long Rate Period shall be effective from and including the commencement date of such Long Rate Period and remain in effect through and including the last day thereof.

(iii) Determination Time. Each such interest rate shall be determined by the Remarketing Agent not later than 4:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of the Long Rate Period.

(h) Conversions between Variable Rates. At the option of the Authority, a Series of Bonds (in full, but not in part) may be converted from one Variable Rate to another as follows:

(i) In any such case, the Variable Rate Conversion Date shall be the first day following an Interest Payment Period for the Variable Rate Bonds, except that in the case of a Long Period, the Variable Rate Conversion Date shall be an Interest Payment Date on which such Series of Bonds is permitted to be optionally redeemed pursuant to Section 4.01. Interest shall accrue on such Series of Bonds at the new interest rate commencing on such day, whether or not a Business Day. Any action required to be taken on the Variable Rate Conversion Date, if such day is not a Business Day, may be taken on the next succeeding Business Day. Notwithstanding anything herein to the contrary, any conversion from a Weekly Rate to a Daily Rate shall require the consent of the Credit Provider.

(ii) The Authority shall give written notice of its intent to exercise such option to effect any such conversion to the Remarketing Agent, the Tender Agent, the Trustee, the Credit Provider and the Liquidity Provider not fewer than 15 nor more than 30 days prior to the proposed Conversion Date. Such notice shall specify the proposed Conversion Date and the Variable Rate to which the conversion will be made, and in the case of any conversion to a Flexible Rate or a Long Rate (including to a Flexible Rate or a Long Rate for a new Flexible Rate Period or a new Long Rate Period, respectively), the duration of such period (which shall in no event extend beyond the Stated Expiration Date). If the Authority does not elect in a timely fashion a new Variable Rate for the Bonds, the Variable Rate then in effect shall be deemed to be the Weekly Rate as provided in paragraphs (v) and (vi) below until changed by timely notice.

(iii) Not fewer than 10 days prior to the proposed Conversion Date, the Trustee shall mail (by first class mail) a written notice of the conversion to the Owners of the applicable Series of Bonds at their addresses as they appear on the Registration Books on the day on which notice is received by the Trustee from the Authority as provided in (ii) above. Such notice shall set forth the information required by Section 4.06(j).

(iv) Any conversion pursuant to this subsection shall be subject to the conditions that, prior to the date of such conversion, the Authority shall have delivered

(A) in the case of conversions of a Series of Bonds to a Variable Rate for which the Required Stated Amount is greater than the Required Stated Amount for the Variable Rate in effect prior to such conversion, to the Trustee an Alternate Credit Facility (or a substitute Liquidity Facility, as applicable), in the Required Stated Amount as of the Conversion Date or written evidence that the stated amount of the Credit Facility (and the Liquidity Facility, as applicable) has, if necessary, been increased to the Required Stated Amount, and (B) in the case of conversions to a Flexible Rate, a Semiannual Rate or a Long Rate, to the Trustee written evidence from each Rating Agency then rating the Bonds that such ratings will not be lowered or withdrawn due to the conversion (other than the withdrawal of any short-term rating in connection with a conversion to a Long Rate). Additionally, in the case of conversions to a Flexible Rate, the Authority shall either (1) deliver to the Trustee written evidence from the Depository to the effect that the Depository will hold such Series of Bonds bearing interest at a Flexible Rate or (2) made arrangements to have new Bonds prepared and executed and registered in such names as shall be specified by the Depository.

(v) Notwithstanding anything herein to the contrary, if on the 35th day prior to the end of any Flexible Rate Period or Long Rate Period, the Authority has failed to exercise its option to convert the rate of interest on such Series of Bonds to another Variable Rate, such Series of Bonds shall be converted to bear interest at a Weekly Rate (but in no event extending beyond the Stated Expiration Date). The Trustee shall give the notice of conversion to the Bond Owners of record not fewer than the tenth (10th) day prior to the end of such period, as provided in paragraph (iii) above, with a copy to the Authority, the Remarketing Agent, the Tender Agent, the Credit Provider and the Liquidity Provider. The interest rate for such Rate Period shall be determined by the Remarketing Agent not later than 4:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of such period.

(vi) Notwithstanding the Authority's delivery of notice of the exercise of its option to effect a conversion pursuant to paragraph (ii) above, conversion to another Variable Rate shall not take effect if: (A) the Authority withdraws such notice of the exercise of its option to effect conversion not later than the Business Day preceding the date on which the interest rate at such Variable Rate is to be determined; (B) the Remarketing Agent fails to determine the interest rate at such Variable Rate; (C) the notice to Bond Owners required by paragraph (iii) above is not given when required; (D) the Authority fails to deliver to the Trustee, the Credit Provider, the Liquidity Provider and the Remarketing Agent on the Variable Rate Conversion Date an Opinion of Bond Counsel to the effect that the conversion is authorized hereunder; (E) any requirement of paragraph (iv) above is not satisfied; or (F) in the case of conversion to a Long Rate, the Authority fails to obtain a firm underwriting commitment. In any of such events, such Series of Bonds shall be payable at the Weekly Rate; provided that the mandatory tender for purchase pursuant to Section 4.06(d) hereof shall nevertheless be carried out if notice of the conversion has been given to the Bond Owners. Withdrawal of a conversion notice shall be given by the Authority to the Trustee, the Remarketing Agent, the Credit Provider and the Liquidity Provider, by telephone, promptly confirmed in writing. No cancellation of a conversion pursuant to this paragraph shall constitute an Event of Default under this Indenture.

(i) Fixed Rate Conversion. At the option of the Authority (provided that a firm underwriting commitment for such Series of Bonds has been obtained), a Series of Bonds (in full, but not in part) may be converted to be payable at a Fixed Rate from a Variable Rate until final maturity or earlier redemption. Any such conversion shall be made as follows:

(i) The Fixed Rate Conversion Date shall be an Interest Payment Date for the Variable Rate last in effect prior to the conversion to a Fixed Rate.

(ii) The Authority shall give written notice of any such conversion to the Trustee, the Remarketing Agent, the Tender Agent, the Credit Provider and the Liquidity Provider not fewer than 45 days prior to the proposed Fixed Rate Conversion Date. Such notice shall specify the proposed Fixed Rate Conversion Date.

(iii) Notice of conversion and mandatory tender shall be given no less than 10 days prior to the proposed Fixed Rate Conversion Date by first class mail by the Trustee to the Owners of all Outstanding Bonds of the applicable Series as their addresses appear on the Registration Books on the date the Trustee receives the notice referred to in paragraph (ii) above. The notice of conversion and mandatory tender mailed to Bond Owners of the applicable Series of Bonds shall set forth the information required by Section 4.06(j).

(iv) No more than 35 days nor less than five (5) days prior to the Fixed Rate Conversion Date, the Remarketing Agent shall determine the Fixed Rate for the Series of Bonds to be converted to a Fixed Rate and provide the Fixed Rate for the Series of Bonds to the Trustee as provided herein. Such Fixed Rate shall be the rate of interest on the Series of Bonds on and after the Fixed Rate Conversion Date and shall be the lowest rate of interest (not in excess of the Maximum Interest Rate) that, in the judgment of the Remarketing Agent as of the date of determination and under prevailing market conditions, would cause the Series of Bonds to have a market value equal to the principal amount thereof plus interest accrued thereon to such date. Such determination shall be conclusive and binding upon the Authority, the Trustee, the Credit Provider, the Liquidity Provider, the Remarketing Agent and the Owners of the Series of Bonds. Not later than 4:00 p.m., New York City time on the date of the determination of such Fixed Rate, the Remarketing Agent shall communicate such Fixed Rate by Electronic Means, or by telephone, followed by mailed written notice, to the Trustee, the Authority and the Credit Provider.

(v) Notwithstanding the Authority's delivery of notice of the exercise of its option to effect a Fixed Rate conversion pursuant to paragraph (ii) above, conversion to a Fixed Rate shall not take effect if: (A) the Authority withdraws such notice of conversion not later than the Business Day preceding the date on which the Fixed Rate is to be determined; (B) the Remarketing Agent fails to determine the Fixed Rate; (C) the notice to Bond Owners for such Series required by paragraph (iii) above is not given when required; (D) the Authority fails to deliver to the Trustee, the Credit Provider, the Liquidity Provider and the Remarketing Agent on the Fixed Rate Conversion Date an Opinion of Bond Counsel to the effect that the conversion is authorized hereunder; or (E) unless otherwise agreed to in writing by the Liquidity Provider, all amounts owing to the Liquidity Provider shall not have been paid on or prior to the Fixed Rate Conversion

Date. In any of such events, the Series of Bonds shall be payable at the Weekly Rate; provided that the mandatory tender for purchase pursuant to Section 4.06(d) hereof shall nevertheless be carried out if notice of conversion to the Fixed Rate has been given to the Bond Owners of such Series. Withdrawal of a conversion notice shall be given by the Authority to the Trustee, the Remarketing Agent, the Tender Agent, the Credit Provider and the Liquidity Provider, by telephone, promptly confirmed in writing. No cancellation of conversion to the Fixed Rate pursuant to this paragraph shall constitute an Event of Default under this Indenture.

(vi) Unless the Authority and the Liquidity Provider shall have otherwise agreed in writing, from and after the Fixed Rate Conversion Date, the Liquidity Facility shall cease to be available with respect to the Series of Bonds converted to a Fixed Rate.

**Section 6. Amendment of Section 2.04 of the Original Indenture.** Section 2.04 of the Original Indenture is hereby amended in its entirety to read as follows:

Any Bond may, in accordance with its terms, be transferred upon the Registration Books by the Person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Trustee. The Trustee shall not be obligated to make any transfer of Bonds during the period selected by the Trustee for the selection of Bonds for redemption or with respect to any Bonds selected for redemption.

Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and shall deliver a new Bond or Bonds of the same Series for a like aggregate principal amount in an Authorized Denomination. The Trustee shall require the Bond Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

**Section 7. Amendment of Section 2.05 of the Original Indenture.** Section 2.05 of the Original Indenture is hereby amended in its entirety to read as follows:

The Bonds may be exchanged at the Corporate Trust Office of the Trustee for a like aggregate principal amount of the same Series of Bonds of Authorized Denominations and of the same maturity. The Authority may charge a reasonable sum for each new Bond issued upon any exchange (except in the case of any exchange of temporary Bonds for definitive Bonds and except in the case of the first exchange of any definitive Bond in the form in which it is originally issued) and the Trustee shall require the payment by the Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. The Trustee shall not be obligated to make any exchange of Bonds during the period selected by the Trustee for the selection of Bonds for redemption, or with respect to any Bonds selected for redemption.

**Section 8. Amendment of Section 2.07 of the Original Indenture.** Section 2.07 of the Original Indenture is hereby amended in its entirety to read as follows:

The Bonds shall be in substantially the form set forth in Exhibit A, as such form shall be modified to reflect the applicable Series of Bonds and conversion of a Series of Bonds to a Long Rate or a Fixed Rate. The Bonds shall be executed in the name and on behalf of the Authority with the manual or facsimile signature of an Authorized Representative of the Authority with its seal affixed thereto attested by the manual or facsimile signature of an Authorized Representative. Such seal may be in the form of a facsimile of the Authority's seal and may be reproduced, imprinted or impressed on the Bonds. The Bonds shall then be delivered to the Trustee for authentication by the Trustee. In case any of the officers who shall have signed or attested any of the Bonds shall cease to be such officer or officers of the Authority before the Bonds so signed or attested shall have been authenticated or delivered by the Trustee, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though those who signed and attested the same had continued to be such officers of the Authority, and also any Bonds may be signed and attested on behalf of the Authority by such Persons as at the actual date of execution of such Bonds shall be the proper officers of the Authority although at the nominal date of such Bonds any such Person shall not have been such officer of the Authority.

Only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A hereto (as such form may be modified as provided above), manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of or on behalf of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

**Section 9. Amendment of Section 2.09 of the Original Indenture.** Section 2.09 of the Original Indenture is hereby amended in its entirety to read as follows:

If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of the same Series of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and destroyed. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Trustee and, if such evidence be satisfactory to them and indemnity satisfactory to them shall be given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of the same Series of like tenor in lieu of and in replacement for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a replacement Bond, the Trustee may pay the same without surrender thereof). The Authority may require payment by the Owner of a sum not exceeding the actual cost of preparing each replacement Bond issued under

this Section and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Bonds of the same Series secured by this Indenture.

**Section 10. Amendment of Section 2.10 of the Original Indenture.** The first paragraph of Section 2.10 of the Original Indenture is hereby amended in its entirety to read as follows:

The Bonds shall be initially delivered in the form of a separate single fully registered Bond without coupons (which may be typewritten) for each maturity of each Series of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

**Section 11. Amendment of Section 4.01 of the Original Indenture.** Section 4.01 of the Original Indenture is hereby amended in its entirety to read as follows:

(a) Optional Redemption.

(i) While any Daily or Weekly Rate is in effect, each Series of Bonds is subject to optional redemption by the Authority from Available Moneys (but only with consent of the Credit Provider if the source of Available Moneys is to be a draw on the Credit Facility) as a whole or in part on any Business Day. While any Monthly, Flexible or Semiannual Rate is in effect for a Series of Bonds, such Series of Bonds is subject to redemption at the option of the Authority (which option may be exercised by the City) from Available Moneys (but only with the consent of the Credit Provider if the source of Available Moneys is to be a draw on the Credit Facility), as a whole or in part on any Interest Payment Date. In all cases the redemption shall be effected at a price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption, without premium. If the source of money to be used for such optional redemption is other than a draw on the Credit Facility, no notice of such optional redemption, other than a rescindable notice, shall be given pursuant to Section 4.03 unless the Authority has on hand Available Moneys sufficient for the redemption price. If such Available Moneys are invested pending their use for redemption, such amount shall be invested only in Permitted Investments of the type described in clause (i) of the definition of Permitted Investments herein and such Permitted Investments must mature or be redeemable on or before the optional redemption date set forth in such notice. In the case of optional redemption of Bonds that are Bank Bonds, the requirement in this paragraph that the Bonds be redeemed from Available Moneys may be waived by the Liquidity Provider. In no event shall moneys drawn on the Liquidity Facility that is not also a Credit Facility be used to pay the redemption price of any Bonds.

Notwithstanding the foregoing, no Bond (other than a Bank Bond) shall be optionally prepaid while any Bank Bond is Outstanding unless all Outstanding Bank Bonds are redeemed or purchased by the Trustee and cancelled concurrently with such redemption or purchase.

If for any reason, the Bank Bonds remain in a book-entry system but have not been assigned a separate CUSIP number, the Trustee shall apply the amounts in the Revenue Fund set aside for redemption to the purchase from the Liquidity Provider of Bank Bonds in an aggregate principal amount not in excess of the principal amount intended to be redeemed at a purchase price equal to the redemption price specified above. The Bank Bonds so purchased shall be cancelled by the Trustee, and the principal amount thereof shall be credited against the principal amount of Bonds otherwise required to be redeemed.

(ii) While any Long Rate is in effect for a Series of Bonds and also after the Fixed Rate Conversion Date for a Series of Bonds, such Series of Bonds is subject to optional redemption by the Authority from Available Moneys or, if there is no Credit Facility in effect with respect to the Bonds, from any source of funds of the Authority or the City, on or after the eight (8) year anniversary date of such Conversion Date, as a whole on any date or in part on any Interest Payment Date, at a redemption price equal to the principal amount of the Series of Bonds to be redeemed, plus accrued interest to the date fixed for redemption, without premium.

Notwithstanding the foregoing, upon any conversion of a Series of Bonds to a Long Rate or a Fixed Rate, the Authority may establish a different date or dates and prices for optional redemption.

(iii) In the event the Authority elects to redeem less than all of a Series of Bonds subject to optional redemption, the Authority shall, by delivery of a Written Certificate to the Trustee, designate the amount of each maturity of or mandatory sinking fund redemption of such Series to be redeemed.

(b) Extraordinary Mandatory Redemption From Insurance or Condemnation Proceeds. Each Series of Bonds shall also be subject to redemption as a whole or in part in any Authorized Denomination on any date, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued thereon to the date fixed for redemption, without premium, to the extent of Net Proceeds received with respect to the Project and transferred from the Insurance and Condemnation Fund to the Revenue Fund pursuant to Section 5.05 (or a draw on the Credit Facility such that the amount of Bonds redeemed corresponds to the amount of Net Proceeds). In the event that the amount of Net Proceeds transferred to the Revenue Fund in connection with the redemption of such Series of Bonds are insufficient to redeem or provide for the redemption of all of such Series of Bonds in full, the Authority shall, by delivery of a Written Certificate to the Trustee, designate the amount of each maturity of such Series to be redeemed; provided that the Authority and the City shall also certify in writing that the Lease Payments to be made thereafter shall not exceed the fair rental value of the Project for any Rental Period. The Bonds redeemed pursuant to this Section 4.01(b) shall be redeemed only with Available Moneys.



(c) Sinking Fund Redemption. The Term Bonds of each Series are subject to mandatory sinking fund redemption by lot, from Revenues (provided that, if there is a Credit Facility in effect which is a direct-pay letter of credit, such redemption shall only occur from a draw on the Credit Facility), on June 1 in each of the years and in the respective amounts as set forth below, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption, as set forth in the following schedule; *provided, however,* that (i) if some but not all of such Series of Bonds have been redeemed pursuant to subsections (a) or (b) above, the total principal amount of such Series of Bonds to be redeemed pursuant to this Section 4.01(c) subsequent to each redemption shall be reduced on a pro rata basis, or as otherwise specified in writing by the Authority, in integral multiples of an Authorized Denomination, and (ii) if all or a portion of the maturities of such Series of Bonds are converted to serial maturities pursuant to Section 2.02(a) and Section 2.03(i) following the Fixed Rate Conversion Date, the Bonds so converted shall not be subject to mandatory sinking fund redemption pursuant to this Section 4.01(c).

**Series 2008E-1 Bonds Maturing June 1, 2025**

<u>Redemption Date</u> <u>(June 1)</u>	<u>Principal</u> <u>Amount</u>
2011	\$555,000
2012	590,000
2013	630,000
2014	665,000
2015	715,000
2016	750,000
2017	800,000
2018	850,000
2019	910,000
2020	960,000
2021	1,020,000
2022	1,020,000
2023	1,100,000
2024	1,190,000
2025*	1,260,000

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\*Maturity

**Series 2008E-2 Bonds Maturing June 1, 2025**

<u>Redemption Date</u> <u>(June 1)</u>	<u>Principal</u> <u>Amount</u>
2011	\$555,000
2012	595,000
2013	630,000
2014	665,000
2015	715,000
2016	750,000
2017	800,000
2018	850,000
2019	910,000
2020	955,000
2021	1,020,000
2022	1,015,000
2023	1,105,000
2024	1,185,000
2025*	1,260,000

\*Maturity

Notwithstanding the mandatory sinking fund redemptions established above, for so long as such Series of Bonds bear interest at a Variable Rate, the Authority may, with the prior written consent of the Credit Provider and the Liquidity Provider but without receiving any consent of the Owners of such Series of Bonds, modify such mandatory sinking fund redemptions in connection with a Substitution pursuant to Section 4.09 of the Project Lease, such that the combined debt service on such Bonds shall, upon the commencement of amortization on such Bonds, be satisfactory to the Authority and the City delivers a Written Certificate to the Authority, the Credit Provider and the Liquidity Provider to the effect that the resulting Lease Payments do not exceed fair rental value for any Rental Period.

(d) Redemption At the Direction of the Credit Provider. For so long as a Credit Facility is in effect with respect to a Series of Bonds and the Credit Provider is not in default thereunder, such Series of Bonds shall be subject to redemption in whole, but not in part, at a redemption price equal to one hundred percent (100%) of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium from a draw on the Credit Facility on the earliest date for which notice of redemption can be timely given pursuant to Section 4.03, such redemption to occur solely at the written direction of the Credit Provider upon the occurrence of an event of default under the Credit Agreement, provided, however, that notwithstanding any notice provision, such redemption shall occur not later than the last Business Day next preceding the expiration or termination of the Credit Facility, and neither the failure to send any notice of redemption, nor the timeliness in sending any redemption notice,

shall affect the sufficiency of the proceedings for the redemption of the Bonds pursuant to this Section 4.01(d) or the cessation of accrual of interest thereon from and after the date fixed for redemption pursuant to this Section 4.01(d).

(e) Purchase of Term Bonds. At any time prior to giving notice of redemption as provided in Section 4.03, the Trustee may, and upon receipt of a Written Request of Authority to such effect the Trustee shall, apply Available Moneys on deposit in the Revenue Fund constituting Available Moneys, or any other source of Available Moneys, to the purchase of Bonds bearing interest at a Long Rate or a Fixed Rate which are subject to mandatory sinking fund redemption on the next succeeding Interest Payment Date at public or private sale, as and when and at such prices (including brokerage and other charges) as the Authority may in its discretion determine, except that the purchase price (excluding accrued interest) shall not exceed the principal amount of such Bonds subject to mandatory sinking fund redemption on such Interest Payment Date.

If the Trustee purchases Bonds as set forth above or if prior to the giving of notice of redemption for Bonds to be redeemed pursuant to mandatory sinking fund redemption the Authority otherwise deposits Bonds subject to such mandatory sinking fund redemption with the Trustee (together with a Certificate of the Authority directing the Trustee to apply such Bonds so deposited to the applicable mandatory sinking fund redemption due on such date), the amount of Bonds so purchased or deposited shall be credited at the time of such purchase or deposit, to the extent of the principal amount thereof, to reduce the applicable mandatory sinking fund redemption.

(f) Purchase of Bonds at Public Sale or Private Sale. In lieu of depositing cash with the Trustee as and for payment of the redemption price of any Bonds bearing interest at a Long Rate or a Fixed Rate pursuant to this Section 4.01, the Authority shall have the option to tender to the Trustee for cancellation any amount of Bonds which have been purchased by the Authority with amounts deposited or to be deposited in the Revenue Fund constituting Available Moneys or from any other source of Available Moneys, which Bonds may be purchased by the Authority at public or private sale as and when and at such prices as the Authority may in its discretion determine; provided, however, that such Bonds must be tendered to the Trustee for cancellation not less than seventy-five (75) days prior to the applicable date of redemption pursuant to this Section 4.01.

(g) Mandatory Purchase In Lieu of Redemption. Notwithstanding anything herein to the contrary, whenever all of the Variable Rate Bonds of a Series are subject to redemption pursuant to (a) or (b) above, the Authority shall, with the consent of the Credit Provider and the Liquidity Provider, have the option to cause such Series of Bonds to be subject to mandatory tender for purchase in lieu of redemption. Such option may be exercised by delivery by the Authority to the Trustee and Remarketing Agent on or prior to the Business Day preceding the applicable redemption date of a written notice specifying that the Bonds shall not be redeemed, but instead shall be subject to mandatory tender for purchase pursuant to this Indenture. Upon delivery of such notice, such Bonds will not be redeemed but will instead be subject to mandatory tender as described in Section 4.06(d) hereof at a tender price equal to the price at

which such Bonds would have been redeemed on the date which would have been the redemption date. Such tender price shall be paid by Available Moneys.

(h) Term-Out. Redemption. The Bonds which are Bank Bonds are subject to redemption at the times and in the amounts provided in the Credit Agreement.

**Section 12. Amendment of Section 4.02 of the Original Indenture.** Section 4.02 of the Original Indenture is hereby amended in its entirety to read as follows:

Whenever provision is made in this Indenture for the redemption or purchase of less than all of a Series of Bonds, the Authority shall select, or in the absence of the Authority so selecting, the Trustee shall select the Bonds to be redeemed or purchased from all of the Series or such given portion thereof not previously called for redemption by lot in any manner which the Trustee in its sole discretion shall deem appropriate and fair; *provided, however,* that Variable Rate Bonds shall be redeemed in the following order of priority (and by lot within each priority):

First: any Bank Bonds;

Second: any Variable Rate Bonds which have been tendered to the Tender Agent on the date fixed for redemption, the notice of which tender shall have been given to the Trustee prior to the selection of Variable Rate Bonds for such redemption pursuant to Section 4.03; and

Third: any other Variable Rate Bonds.

**Section 13. Amendment of Section 4.04 of the Original Indenture.** Section 4.04 of the Original Indenture is hereby amended in its entirety to read as follows:

Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of Authorized Denominations of the same Series and of the same maturity in an aggregate principal amount equal to the unredeemed portion of the Bonds surrendered.

**Section 14. Amendment of Section 4.05 of the Original Indenture.** Section 4.05 of the Original Indenture is hereby amended in its entirety to read as follows:

Notice having been given as aforesaid, and moneys for the redemption (including the interest to the applicable date of redemption and including any applicable premium), having been set aside in the Revenue Fund or any of the accounts therein, the Bonds shall become due and payable on said date of redemption, and, upon presentation and surrender thereof at the Corporate Trust Office of the Trustee, said Bonds shall be paid at the redemption price thereof, together with interest accrued and unpaid to said date of redemption and premium, if any.

If, on said date of redemption, moneys for the redemption of all of a Series of Bonds to be redeemed, together with interest to said date of redemption, shall be held by the Trustee so as to be available therefor on such date of redemption, and, if notice of redemption thereof shall have been given as aforesaid and not rescinded, then, from and after said date of redemption, interest represented by said Series of Bonds shall cease to accrue and become payable. All moneys held by or on behalf of the Trustee for the redemption of Bonds shall be held in trust for the account of the Owners of the Bonds so to be redeemed.

All Bonds paid at maturity or redeemed prior to maturity pursuant to the provisions of this Article IV shall be cancelled upon surrender thereof and destroyed.

**Section 15. Amendment of Section 4.06 of the Original Indenture.** Section 4.06 of the Original Indenture is hereby amended in its entirety to read as follows:

Variable Rate Bonds are subject to optional and mandatory tender for purchase as provided in this Section.

(a) Optional Tender. Beneficial Owners of Variable Rate Bonds (other than Bonds owned by or for the account of the City or the Authority and Bonds purchased with funds provided from a draw on a Liquidity Facility) bearing interest at a Daily Rate, a Weekly Rate or a Monthly Rate may elect to have their Bonds, or portions thereof in amounts equal to Authorized Denominations (so long as any untendered portion is also an Authorized Denomination), purchased at a Purchase Price equal to the principal amount of such Bonds (or portions thereof), plus accrued interest, if any, payable in immediately available funds on the following purchase dates and upon the giving of the following telephonic or written notices meeting the further requirements of subsection (b) below:

(i) Variable Rate Bonds with interest payable at a Daily Rate may be tendered for purchase on any Business Day prior to conversion from a Daily Rate to a different Variable Rate, upon delivery of an irrevocable telephonic or written notice of tender given to the Tender Agent and the Remarketing Agent not later than 11:00 a.m., New York City time, on the designated purchase date.

(ii) Variable Rate Bonds with interest payable at a Weekly Rate may be tendered for purchase on any Business Day prior to conversion from a Weekly Rate to a different Variable Rate, upon delivery of an irrevocable written notice of tender to the Tender Agent and the Remarketing Agent not later than 3:00 p.m., New York City time, on a Business Day not less than seven (7) calendar days prior to the designated purchase date, which date for purchase shall be set forth in the tender notice.

(iii) Variable Rate Bonds with interest payable at a Monthly Rate may be tendered for purchase on the commencement date of the next succeeding Rate Period for such Bonds upon delivery of an irrevocable written notice of tender to the Tender Agent and the Remarketing Agent not later than 5:00 p.m.,

New York City time, on a Business Day not less than seven (7) calendar days prior to the designated purchase date.

(b) Notice of Tender. Each notice of tender:

(i) shall, in case of a written notice, be delivered to the Tender Agent and the Remarketing Agent at their respective Corporate Trust Office and be in form satisfactory to the Tender Agent;

(ii) shall state, whether delivered in writing or by telephone, (A) the principal amount of the Bond to which the notice relates and the CUSIP number of such Bond, (B) that the Beneficial Owner irrevocably demands purchase of such Bond or a specified portion thereof in an amount equal to an Authorized Denomination, (C) the date on which such Bond or portion is to be purchased, and (D) payment instructions with respect to the Purchase Price; and

(iii) shall automatically constitute, whether delivered in writing or by telephone (A) an irrevocable offer to sell the Bond (or portion thereof) to which such notice relates on the purchase date to any purchaser selected by the Remarketing Agent (or to the Liquidity Provider in the case of purchases made with funds drawn under the Liquidity Facility), at a price equal to the Purchase Price thereof (or portion thereof), (B) an irrevocable authorization and instruction to the Tender Agent to effect transfer of such Bond (or portion thereof) upon payment of such price to the Tender Agent on the purchase date, (C) an irrevocable authorization and instruction to the Tender Agent to effect the exchange of the Bond to be purchased in whole or in part for other Bonds of the same Series bearing interest at a Daily Rate, a Weekly Rate or a Monthly Rate, as applicable, in an equal aggregate principal amount so as to facilitate the sale of such Bond (or portion thereof to be purchased), and (D) an acknowledgment that such Beneficial Owner will have no further rights with respect to such Bond (or portion thereof) upon deposit of an amount equal to the Purchase Price thereof with the Tender Agent on the purchase date, except for the right of such Beneficial Owner subject to subsection (k) to receive such Purchase Price on the purchase date.

The determination of the Tender Agent and the Remarketing Agent as to whether a notice of tender has been properly delivered pursuant to the foregoing shall be conclusive and binding upon the Beneficial Owner. The Tender Agent or the Remarketing Agent may waive any irregularity or nonconformity in any tender.

(c) Procedures Upon Optional Tender. No later than 4:00 p.m., New York City time, on the Business Day immediately following the date of receipt of any notice of tender (or by 11:15 a.m., New York City time, on the date of such receipt, in the case of Bonds with interest payable at a Daily Rate), the Tender Agent shall notify the Remarketing Agent, the Trustee and the Liquidity Provider, by telephone (promptly confirmed in writing) of the principal amount of Bonds (or portions thereof) to be purchased and the date of purchase. The Remarketing

Agent shall offer for sale and use its best efforts to find purchasers for all Bonds or portions thereof for which notice of tender has been received pursuant to subsection (a) of this Section. The terms of any sale by the Remarketing Agent shall provide for the payment of the Purchase Price for tendered Bonds by the Remarketing Agent to the Tender Agent in immediately available funds at or before 11:30 a.m., New York City time (12:15 p.m., New York City time, in the case of Bonds bearing interest at a Daily Rate) on the Optional Tender Date. At or before 11:15 a.m., New York City time (12:00 o'clock noon, New York City time, in the case of Bonds bearing interest at a Daily Rate), on the date fixed for purchase of tendered Bonds, the Remarketing Agent shall give notice by Electronic Means, to the Tender Agent, and the Tender Agent shall then promptly notify the Liquidity Provider by Electronic Means, of the principal amount of tendered Bonds that were remarketed and the aggregate principal amount of Bonds, if any, the Remarketing Agent failed to remarket, and specifying the names, addresses and taxpayer identification numbers of purchasers of remarketed Bonds, the denominations of remarketed Bonds to be delivered to each purchaser and, if available, payment method instructions for regularly scheduled interest payments on such remarketed Bonds.

The Remarketing Agent shall cause to be paid to the Tender Agent on the date fixed for purchase of tendered Bonds, all amounts representing proceeds of the remarketing of such Bonds, such payments to be made in the same manner and at the same time specified in subsection (d) below with respect to remarketings in connection with mandatory tenders. If such amounts are not sufficient to pay the principal amount plus the accrued and unpaid interest thereon (if any) to the purchase date, the Tender Agent shall at or before 11:30 a.m., New York City time (12:15 p.m., New York City time, in the case of Bonds bearing interest at a Daily Rate), on the purchase date notify the Trustee and the Authority of the amount to be drawn under the Liquidity Facility to satisfy the deficiency. The Trustee shall, at or before 11:45 a.m., New York City time (12:30 p.m., New York City time, in the case of Bonds bearing interest at a Daily Rate), on the purchase date, present drafts for payment under and in accordance with the terms of the Liquidity Facility in an amount equal to such deficiency (or, if the Tender Agent has not notified the Trustee of the amount of such deficiency, in an amount equal to the principal amount of all tendered Bonds plus the accrued and unpaid interest thereon (if any) to the purchase date). The Trustee shall either instruct the Liquidity Provider to pay the proceeds of such draw on the Liquidity Facility directly to the Tender Agent or promptly deposit the proceeds of such draw on the Liquidity Facility with the Tender Agent.

Remarketing proceeds and draws on the Liquidity Facility relating to Bonds of a Series shall be used to pay only the Purchase Price of Bonds of such Series, or returned to the Liquidity Provider as provided herein, and shall not be used for any other purpose. The Trustee and the Tender Agent shall also hold all remarketing proceeds and all proceeds from drawings on the Liquidity Facility separate and apart from each other. Pursuant to subsection (f) below, the Trustee and the Tender Agent shall create such accounts and subaccounts



within the Purchase Fund that it deems necessary in order to comply with the requirements of this paragraph.

Notwithstanding any other provision of this Indenture, Bank Bonds (unless such Bank Bonds remain in book-entry form but have not been assigned a separate CUSIP number) and Bonds owned by, or for the account of, the Authority or the City may not be purchased by draws on the Liquidity Facility in the event of an optional tender for purchase.

(d) Mandatory Tenders. Variable Rate Bonds shall be subject to mandatory tender at a Purchase Price equal to the principal amount thereof, plus accrued interest, on the following Mandatory Tender Dates and under the circumstances as follows:

(i) on any Conversion Date, and on the first day of a Flexible Rate Period, a Semiannual Rate Period or a Long Rate Period following another Flexible Rate Period, Semiannual Rate Period or Long Rate Period, as applicable;

(ii) on any date the Authority delivers an Alternate Credit Facility (including a substitute Liquidity Facility);

(iii) on a Business Day not later than the fourth (4th) calendar day (or if such day is not a Business Day, on the immediately preceding Business Day) following receipt by the Trustee of (a) a written notice of termination (as provided in the Credit Agreement) from the Liquidity Provider, but only if the Liquidity Facility permits funds to be drawn thereunder to purchase Bonds prior to such termination, (b) if the Credit Facility is a direct-pay letter of credit, a written notice from the Credit Provider stating that the interest component of the Credit Facility has not been reinstated to the full stated amount thereof following a draw thereon to pay interest on the Bonds (excluding from such interest component Bonds which are Bank Bonds or which have been redeemed) or (c) if the Credit Facility is a direct-pay letter of credit, a written notice from the Credit Provider that there has been an event of default under the Credit Agreement and notifying the Trustee that the Credit Facility will be terminated as provided in the Credit Agreement and directing the Trustee to purchase the Bonds pursuant to a mandatory tender;

(iv) on the last Business Day which is not less than ten (10) days before the Stated Expiration Date of any Credit Facility or Liquidity Facility if an irrevocable commitment to provide an Alternate Credit Facility (or substitute Liquidity Facility) in substitution therefor is not delivered to the Trustee at least twenty-five (25) days before such stated expiration date;

(v) if permitted by the Liquidity Facility then in effect, on any redemption date on which the Authority, with the consent of the Liquidity Provider, has elected to purchase Variable Rate Bonds in lieu of redemption pursuant to Section 4.01(g); and

(vi) if permitted by the Liquidity Facility then in effect, on any Interest Payment Date in connection with the modification or amendment of the Indenture pursuant to Section 9.01 hereof, as directed in writing by the Authority with the written consent of the Liquidity Provider.

Neither the Bond Owners nor the Beneficial Owners shall, in any of such events, have any right to elect to retain such Bonds. The Remarketing Agent shall offer for sale and use its best efforts to find purchasers for Bonds subject to mandatory tender; provided that any such remarketing following mandatory tender pursuant to clauses (iii) or (iv) above shall be undertaken only with the consent of the Credit Provider or the Liquidity Provider, as applicable. The Remarketing Agent shall continue to remarket Bank Bonds until otherwise directed by the Liquidity Provider. The terms of any sale by the Remarketing Agent shall provide for the payment of the Purchase Price of the tendered Bonds by the Remarketing Agent to the Tender Agent in immediately available funds at or before 11:30 a.m., New York City time (12:15 p.m., New York City time, in the case of Bonds bearing interest at a Daily Rate), on the relevant purchase date.

The Trustee shall send a Mandatory Tender Notice containing the information set forth in (j) below to the Owners of the Bonds at their addresses shown on the registration books of the Trustee. Such Notice of Mandatory Tender shall be given, in the case of (i), (ii) (iv), (v) and (vi) above, not less than 10 days prior to the Mandatory Tender Date, and, in the case of (iii) above, the first date on which such notice can be given, after receipt by the Trustee of the written notice referred to therein. In no event shall failure to send, on a timely basis, a Mandatory Tender Notice, or any defect therein, affect the sufficiency of the proceedings for such mandatory tender.

(e) Procedures Upon Mandatory Tender. At or before 11:15 a.m., New York City time, (12:00 o'clock noon, New York City time, in the case of Bonds bearing interest at a Daily Rate), on the Mandatory Tender Date, the Remarketing Agent for the Bonds tendered shall give notice by Electronic Means to the Tender Agent, and the Tender Agent shall then promptly notify the Liquidity Provider by Electronic Means of the principal amount of tendered Bonds that were remarketed and the aggregate principal amount of Bonds, if any, the Remarketing Agent failed to remarket, and specifying such information as may be required for the Tender Agent of the Trustee to deliver the Bonds to the purchasers thereto. The Remarketing Agent shall cause to be paid to the Tender Agent, on the date fixed for purchase of tendered Bonds, all amounts representing proceeds of the remarketing of such Bonds, such payments to be made in the manner and at the time specified in subsection (d) above. If such amounts are not sufficient to pay the Purchase Price, the Tender Agent shall at or before 11:30 a.m., New York City time (12:15 p.m., New York City time, in the case of Bonds bearing interest at a Daily Rate), on the purchase date notify the Trustee, the Authority and the Liquidity Provider of the amount to be paid by the Liquidity Provider under the Liquidity Facility to satisfy the deficiency (or, if the Tender Agent has not notified the Trustee of the amount of such deficiency, in an amount equal to the Purchase Price of all tendered Bonds). The

Trustee shall, at or before 11:45 a.m., New York City time (12:30 p.m., New York City time, in the case of Bonds bearing interest at a Daily Rate), on the purchase date, present drafts for payment under and in accordance with the terms of the Liquidity Facility in an amount equal to such deficiency. The Trustee shall either instruct the Liquidity Provider to pay the proceeds of such draw on the Liquidity Facility directly to the Tender Agent or promptly deposit the proceeds of such draw on the Liquidity Facility with the Tender Agent. In the event such draw is made due to a mandatory tender described in Section 4.06(d)(ii) hereof, such draw shall be made on the existing Liquidity Facility, and not on the substitute Liquidity Facility.

Remarketing proceeds and draws on the Liquidity Facility with respect to Bonds of a Series shall be used to pay only the Purchase Price of Bonds of such Series, or returned to the Liquidity Provider as provided herein, and shall not be used for any other purpose. The Trustee shall also hold all remarketing proceeds and all proceeds from drawings on the Liquidity Facility separate and apart from each other. The Trustee shall create such accounts and subaccounts within the Purchase Fund that it deems necessary in order to comply with the requirements of this paragraph.

Notwithstanding any other provision of this Indenture, Bank Bonds (unless such Bank Bonds remain in book-entry form but have not been assigned a separate CUSIP number) and Bonds owned by, or for the account of, the Authority or the City, may not be purchased by draws on the Liquidity Facility.

(f) Purchase Fund. If at any time the Trustee or the Tender Agent needs to draw on the Liquidity Facility or it receives any remarketing proceeds, the Tender Agent shall establish and maintain a special fund designated as the "Bond Purchase Fund" (herein called the "Purchase Fund") and within such fund such accounts or subaccounts as it deems necessary. The money in the Purchase Fund and the accounts therein shall be held separate from all other funds in trust and applied solely as provided in this subsection. The Tender Agent shall deposit all moneys, including proceeds of drawings upon the Liquidity Facility, delivered to it hereunder for the purchase of Bonds into the Purchase Fund. The Tender Agent shall hold all remarketing proceeds in trust for the exclusive benefit of the persons that shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to it for the account of such persons and, thereafter, for the benefit of the Owners tendering such Bonds, and shall hold all draws on the Liquidity Facility in trust for the exclusive benefit of the Bond Owners who shall deliver Bonds to it for purchase until the Bonds purchased with such moneys shall have been delivered to it for the account of the Liquidity Provider. Moneys derived from the remarketing of Bonds of a Series shall be used to pay the Purchase Price of Bonds of such Series, and not for any other purpose, and moneys derived from a draw on the Liquidity Facility to pay the Purchase Price of Bonds of a Series shall be used to pay the Purchase Price of Bonds of such Series, or returned to the Liquidity Provider as provide herein, and not for any other purpose. The Trustee and the Tender Agent shall also hold all remarketing proceeds and all proceeds from drawings on the Liquidity Facility separate and apart from each other in separate accounts. The Trustee and the Tender Agent shall create such accounts and subaccounts within the Purchase Fund that it deems necessary in order to comply with the requirements of this paragraph.

Moneys in the Purchase Fund shall not be commingled with other funds held by the Tender Agent and shall remain uninvested. The Authority shall not have any right, title or interest in or to any moneys held in the Purchase Fund or held by a Remarketing Agent. The Authority shall not be obligated to provide any moneys for the purchase of tendered Bonds other than those received pursuant to the remarketing of Bonds or from drawings under the Liquidity Facility.

(g) Payment of Purchase Price. At or before 3:00 p.m., New York City time, on the date set for purchase of tendered Bonds and upon receipt by the Tender Agent of 100% of the aggregate Purchase Price of the tendered Bonds, the Tender Agent shall pay the Purchase Price of such Bonds to the Owners thereof at its Corporate Trust Office or by bank wire transfer. Such payments shall be made in immediately available funds. The Tender Agent shall apply in order (i) moneys paid to it by the Remarketing Agent as proceeds of the remarketing of such Bonds by the Remarketing Agent and (ii) moneys furnished to the Tender Agent by the Trustee and derived from drawings under the Liquidity Facility. If at 3:00 p.m., New York City time, on any date of purchase of Bonds any balance remains in the Purchase Fund derived from a draw on the Liquidity Facility in excess of any unsatisfied purchase obligation, such excess shall be promptly returned to the Liquidity Provider; provided that, if the Tender Agent is not able to return such amounts to the Liquidity Provider by 4:00 p.m., New York City time, the Tender Agent shall invest such amount in Permitted Investments described in clause (vi) of the definition thereof and shall remit such amounts (plus any additional amounts required by the Liquidity Facility, if such amounts are available to the Tender Agent or the Trustee) to the Liquidity Provider on the next succeeding Business Day, and the Tender Agent shall transfer to the Trustee any investment earnings on such amounts when received for deposit in the Revenue Fund. If the funds available for purchases of Bonds pursuant to this Section are inadequate for the purchase of all Bonds tendered on any purchase date, no purchase shall be consummated and the Tender Agent shall return all tendered Bonds to the Owners thereof and return all moneys received for the purchase of such Bonds to the persons providing such moneys. Notwithstanding any such inadequacy (whether due to a lack of remarketing proceeds or a failure on the part of the Liquidity Provider to honor a draw on the Liquidity Facility), the Remarketing Agent shall continue to have the right to remarket the Bonds at a rate not in excess of the Maximum Interest Rate.

(h) Delivery of Bonds. Subject to subsection (k), all Bonds to be purchased on any Optional Tender Date or Mandatory Tender Date shall be required to be delivered to the Corporate Trust Office of the Tender Agent at or before 12:00 noon, New York City time, on such purchase date, in all other cases. If the Owner of any Bond (or portion thereof) that is subject to purchase pursuant to this Section fails to deliver such Bond to the Tender Agent for purchase on or prior to such Optional Tender Date or Mandatory Tender Date, and if the Tender Agent is in receipt of the Purchase Price therefor, such Bond (or portion thereof) shall nevertheless be deemed purchased on the day fixed for purchase thereof and ownership of such Bond (or portion thereof) shall be transferred to the purchaser thereof as provided below. Any Owner who fails to deliver such Bond for purchase shall have no further rights thereunder except the right to receive the Purchase Price thereof upon presentation and surrender of said Bond to

the Tender Agent. The Tender Agent shall, as to any tendered Bonds that have not been delivered to it, (A) promptly notify the Remarketing Agent remarketing such Bonds of such non delivery and (B) instruct the Trustee to place a stop transfer against an appropriate amount of Bonds registered in the name of such Owner(s) on the Bond registration books. The Trustee shall place such stop(s) commencing with the lowest serial number Bond registered in the name of such Owner(s) until stop transfers have been placed against an appropriate amount of Bonds until the appropriate tendered Bonds are delivered to the Trustee. Upon such delivery, the Trustee shall make any necessary adjustments to the Bond registration books. On the date of purchase, the Trustee shall direct the Tender Agent to authenticate and deliver all Bonds purchased on any purchase date as follows: (1) Bonds purchased and remarketed by the Remarketing Agent shall be registered in the name of the Depository (or its Nominee) or as otherwise directed by the Remarketing Agent and delivered to the Nominee for the account of the purchasers of such Bonds by 2:00 p.m., New York City time, in accordance with the instructions of the applicable Remarketing Agent; and (2) Bonds purchased with amounts furnished under the Liquidity Facility, if any, shall be registered in the name of the Liquidity Provider or its designee and held by the Trustee or the Liquidity Provider pursuant to the Credit Agreement for such Series.

(i) Limitations on Purchases and Sales. Anything in this Indenture to the contrary notwithstanding, no Bonds owned by or for the account of the Authority or the City shall be purchased hereunder from the proceeds of the Liquidity Facility, nor shall a Remarketing Agent sell any Bonds to the Authority, the City or any other obligor on the Bonds. The Authority hereby agrees that, so long as there is a Liquidity Facility in effect with respect to a Series of Bonds it will not purchase any Bonds of such Series from the Remarketing Agent or otherwise, except as permitted in Section 4.01(e), (f) and (g) and Section 4.06(d) hereof. If there shall have occurred and be continuing an Event of Default, unless the Liquidity Provider shall otherwise consent, purchases of such Bonds shall be made only with the proceeds from a drawing under the Liquidity Facility and there shall be no sales of such Bonds pursuant to this Section. A Remarketing Agent shall not sell Bonds if the Remarketing Agent receives written notice from the Liquidity Provider stating that an event of default under the Credit Agreement has occurred and is continuing and requesting the Remarketing Agent not to remarket Bonds, provided, however, that the Remarketing Agent shall continue to have the right to remarket Bonds at a rate not in excess of the Maximum Interest Rate in the event there are inadequate funds for the purchase of the Bonds (whether due to a lack of remarketing proceeds or a failure on the part of the Liquidity Provider to honor a draw on the Liquidity Facility). In the event that Bonds of a Series purchased with the proceeds of a drawing on the Liquidity Facility for such Series of Bonds are remarketed by the applicable Remarketing Agent on behalf of the Liquidity Provider, the Trustee shall re-register such Bonds in the name of or at the direction of the purchaser thereof only upon receipt from the Liquidity Provider for such Series of Bonds of written notification that the principal and interest components of the applicable Liquidity Facility have been reinstated to an amount equal to the aggregate principal amount of Bonds of such Series Outstanding (less the principal amount of any Bonds of such Series still being retained by such Liquidity Provider) plus an amount equal to interest on such Bonds (computed at the Maximum Interest Rate) for the period set forth in the Liquidity Facility for such Series of Bonds.

(j) Content of Mandatory Tender Notices. Notices of mandatory tender mailed to Bond Owners pursuant to subsection (d) of this Section shall:

- (i) specify the proposed Mandatory Tender Date;
- (ii) state that the Bonds shall be subject to mandatory tender for purchase on the Mandatory Tender Date;
- (iii) state that Owners may not elect to retain their Bonds following the Mandatory Tender Date;
- (iv) state that all Bonds shall be required to be delivered to the Corporate Trust Office of the Tender Agent at or before 12:00 noon, New York City time, on the Mandatory Tender Date;
- (v) state that if the Owner of any Bond (or portion thereof) fails to deliver such Bond to the Tender Agent for purchase on the Mandatory Tender Date, and if the Tender Agent is in receipt of the Purchase Price therefor, such Bond (or portion thereof) shall nevertheless be deemed purchased on the Mandatory Tender Date and ownership of such Bond (or portion thereof) shall be transferred to the purchaser thereof; and
- (vi) state that any Owner who fails to deliver such Bond for purchase shall have no further rights thereunder except the right to receive the Purchase Price thereof upon presentation and surrender of said Bond to the Tender Agent and that the Trustee will place a stop transfer against the Bonds registered in the name of such Owner(s) on the Bond registration books.

(k) Book-Entry System; Tenders. Notwithstanding any other provision of this Indenture, during any period that the Bonds are issued in book entry only form, (i) any notice of tender delivered pursuant to the above provisions must also (A) provide a written certification to the Tender Agent that the party delivering the notice is the Beneficial Owner of the Bonds referred to in the notice, and (B) if the Beneficial Owner is other than a Depository System Participant, identify the Depository System Participant through whom the Beneficial Owner will direct the transfer referred to in the following clause (ii), (ii) on or before the purchase date, the Beneficial Owner must direct (or if the Beneficial Owner is not a Depository System Participant, cause its Depository System Participant to direct) the transfer of such Bonds on the records of the Depository to the account of, or as directed by, the Trustee; and (iii) it shall not be necessary for Bonds to be delivered on the date specified for purchase thereof, but such purchase shall be made as if such Bonds had been so delivered, and the Purchase Price thereof shall be paid to the Depository.

**Section 16. Amendment of Section 4.09(c), Section 4.09(d) and Section 4.09(e) of the Original Indenture.** Section 4.09(c), Section 4.09(d) and Section 4.09(e) of the Original Indenture are hereby amended in their entireties to read as follows:

(c) Notwithstanding anything else in this Indenture, funds drawn on a Liquidity Facility relating to a Series Bonds shall be used only to purchase such Series of Bonds or returned to the Liquidity Provider. The obligation of the Liquidity Provider to purchase Variable Rate Bonds (or to otherwise advance funds for the purchase of tendered Bonds) shall terminate upon the Termination Date.

(d) If an Event of Termination occurs or if the Liquidity Provider suspends its purchase obligations in accordance with the Liquidity Facility, in each case with respect to a Series of Bonds, the Trustee shall immediately notify the Owners of all Variable Rate Bonds of such Series then Outstanding that (i) the Liquidity Facility has been terminated or suspended (as the case may be), (ii) the Tender Agent, or the Trustee, as the case may be, will no longer be able to purchase Variable Rate Bonds of such Series with moneys drawn on the Liquidity Facility, (iii) the right of Bondowners to tender Variable Rate Bonds of such Series for purchase has been terminated or suspended (as the case may be), and (iv) the Liquidity Provider will be under no obligation to purchase Variable Rate Bonds of such Series (or to otherwise advance funds for the purchase of tendered Bonds of such Series) unless, in the case of a suspension, the event of default giving rise to such suspension is cured.

(e) Promptly after receipt from the Liquidity Provider of a notice of the establishment of a Termination Date pursuant to the provisions of the Liquidity Facility, the Trustee shall give notice to the Owners of all Variable Rate Bonds of such Series of the Termination Date and, if applicable, also notify the Owners of such Variable Rate Bonds of such Series that such Bonds are subject to mandatory tender pursuant to Section 4.06(d)(iii) hereof. Such notice shall be given in accordance with the provisions of Section 4.06(j) hereof.

**Section 17. Amendment of Section 5.02 of the Original Indenture.** Section 5.02 of the Original Indenture is hereby amended in its entirety to read as follows:

On or before each Interest Payment Date, the Trustee shall apply all moneys in the Revenue Fund as set forth below either to pay debt service on the Bonds, to reimburse the Credit Provider for drawings under the Credit Facility used to pay the principal of or interest on the Bonds, to purchase Bonds pursuant to Section 4.01(e) or (f), or to make a deposit in the Reserve Fund. Such Revenues shall be so applied in the order of priority set forth below, each such requirement to be satisfied before any payment subsequent in priority. The Trustee acknowledges that the City is entitled to receive credits against Lease Payments under certain circumstances as provided in Section 4.04 of the Project Lease. Notwithstanding any other provision herein or in the Project Lease, in the event that Revenues are insufficient to make the deposits required pursuant to (a), (b) and (c) below in full, any insufficiency shall be allocated among each Series of Bonds on a proportionate basis based on debt service due on each such Series. In the event the Credit Facility is a direct-pay letter of credit and the Credit Provider does not honor a draw on the Credit Facility to pay the principal of and interest on the applicable Series of Bonds, when due, the Trustee shall apply the Revenues on deposit in the Revenue Fund to make such payment of principal and interest. In the event that there are insufficient amounts on deposit in the Revenue Fund to make such

payments, the Trustee shall notify the City and the Authority and request that the City make all Lease Payments currently due under the Project Lease in order to provide sufficient amounts for such payment.

(a) Interest Payments. The Trustee, on or prior to each Interest Payment Date or each date set for the redemption of Bonds pursuant to Section 4.01(a), (b) or (c), shall first apply amounts on deposit in the Revenue Fund, to (i) reimburse the Credit Provider for drawings under the Credit Facility (including interest accrued on any such drawings) used to pay interest on the Bonds, (ii) pay the aggregate amount of interest becoming due and payable on the Outstanding Bonds on the next succeeding Interest Payment Date or redemption date pursuant to Section 4.01(a) or (b) or, (iii) at the Written Request of the Authority filed with the Trustee, to pay accrued interest on any Bonds purchased by the Trustee or the Authority pursuant to Section 4.01(e) or (f).

(b) Principal Payments. The Trustee, on or prior to each Interest Payment Date on which principal of the Bonds is payable (including by mandatory sinking fund redemption pursuant to Section 4.01(c)) or each date set for the redemption of Bonds pursuant to Section 4.01(a) or (b), after making the payments required on such date by subsection (a) above (or setting aside the amounts required to make such payments), shall next apply amounts on deposit in the Revenue Fund to (i) reimburse the Credit Provider for drawings on the Credit Facility used to pay principal (including pursuant to any redemption) on the Bonds, (ii) pay the principal of the Bonds then due or required to be paid on such Interest Payment Date or redemption date pursuant to Section 4.01(a) or (b), or (iii) at the Written Request of the Authority, filed with the Trustee to purchase Bonds pursuant to Section 4.01(e) or (f) hereof.

(c) Reserve Fund. On each Interest Payment Date, after making all payments required by subsections (a) and (b) above, the Trustee shall deposit in the Reserve Fund such amounts as may be necessary to maintain on deposit therein an amount equal to the Reserve Requirement; provided that following issuance of the Bonds, failure to so maintain such amounts on deposit in the Reserve Fund (because such amounts have been used for the purpose for which the Reserve Fund has been established) shall not constitute an Event of Default hereunder, but only if and to the extent Revenues are not available for such purpose.

**Section 18. Amendment of Section 5.09 of the Original Indenture.** Section 5.09 of the Original Indenture is hereby amended in its entirety to read as follows:

The other provisions of this Article V notwithstanding, prior to the termination thereof, the Trustee shall draw on the applicable Credit Facility in an amount and at such times (as such times shall be set forth in such Credit Facility) as shall be required to pay in full the principal of and interest on the applicable Series of Bonds (excluding any Bank Bonds registered in the name of the Credit Provider or its designee (unless such Bank Bonds remain in book-entry form and have not been assigned a separate



CUSIP number) or Bonds registered in the name of the Authority or the City). If such Credit Facility is a direct-pay letter of credit, the Trustee shall make such draw at such time as is required to receive amounts needed on each Interest Payment Date, maturity date, mandatory sinking fund redemption date, other redemption date and the date (if any) on which the applicable Series of Bonds are declared due and payable pursuant to Section 7.01 due to the occurrence of an Event of Default hereunder. If the Credit Facility is an insurance policy, the Trustee shall make such draw in accordance with the terms of such insurance policy to pay the principal of and interest on the applicable Series of Bonds following non-payment thereof from Revenues on any Interest Payment Date, maturity date, mandatory sinking fund redemption date or, with the consent of the Credit Provider, other redemption date and following a recovery of payments of principal of and interest on such Bonds pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction. Except as otherwise provided herein, if the Credit Facility is a direct pay letter of credit, the Trustee shall pay the principal of and interest on the applicable Series of Bonds (excluding any Outstanding Bank Bonds registered in the name of the Credit Provider or its designee) when due and payable solely from moneys drawn under the Credit Facility. The Trustee shall also draw moneys under the applicable Liquidity Facility pursuant to Section 4.06 for the purpose of paying the Purchase Price of any Bonds of the applicable Series (excluding any Outstanding Bank Bonds registered in the name of the Liquidity Provider or its designee or in the name of the Authority or the City) to the extent required by Section 4.06. Pending application as aforesaid, except as required by Section 4.06 in connection with paying the Purchase Price of a Series of Bonds, all moneys drawn under the applicable Credit Facility shall be deposited in a special fund designated the "Credit Facility Bond Payment Fund". The Credit Facility Bond Payment Fund shall be established and maintained by the Trustee and held in trust apart from all other moneys and securities held under this Indenture or otherwise, and the Trustee shall have the exclusive and sole right of withdrawal from the Credit Facility Bond Payment Fund for the exclusive benefit of the Owners of the Bonds with respect to which such drawing was made. Moneys drawn on the Credit Facility and deposited in the Credit Facility Bond Payment Fund for the payment of debt service on a particular Series of Bonds shall be used only to pay debt service on such Series of Bonds or returned to the Credit Provider if not so needed. Moneys in the Credit Facility Bond Payment Fund shall be held in cash and shall not be invested. Any amounts remaining on deposit in the Credit Facility Bond Payment Fund and not required for the purpose for which drawn shall be promptly repaid to the Credit Provider. The Trustee shall create such accounts and subaccounts within the Credit Facility Bond Payment Fund that it deems necessary in order to comply with the provisions of this Section 5.09.

Notwithstanding any other provision of this Indenture, moneys on deposit in the Credit Facility Bond Payment Fund shall be held uninvested and shall not be commingled with any other funds held hereunder or otherwise.

**Section 19. Amendment of Section 5.10 of the Original Indenture.** Section 5.10 of the Original Indenture is hereby amended in its entirety to read as follows:

(a) The Trustee shall hold and maintain the Credit Facility for the benefit of the applicable Bond Owners until the Credit Facility terminates in accordance with its terms. The Trustee shall, subject to the provisions of this Indenture, diligently enforce all terms, covenants and conditions of the Credit Facility, including payment when due of any draws on the Credit Facility, and will not consent to or agree to or permit any amendment or modification of either thereof which would materially adversely affect the rights or security of the Owners of the Bonds. If at any time during the term of the Credit Facility any successor Trustee shall be appointed and qualified under this Indenture, the resigning or removed Trustee shall request that the Credit Provider transfer the Credit Facility, if required, by the Credit Facility, to the successor Trustee. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment. Upon the occurrence of one of the following events, the Trustee shall immediately surrender the Credit Facility (or, if applicable, the Liquidity Facility), if required by the Credit Facility (or, if applicable, the Liquidity Facility), to the Credit Provider (or, if applicable, the Liquidity Provider) for cancellation: (i) the Stated Expiration Date, (ii) the date that there are no longer any Bonds of the applicable Series Outstanding under this Indenture, (iii) five (5) days after the Fixed Rate Conversion Date (unless the Credit Facility is to remain in effect with respect to any Bonds of the applicable Series), (iv) the day after the date of issuance of an Alternate Credit Facility (or, if applicable, the substitute Liquidity Facility) (unless the Credit Facility or, if applicable, the Liquidity Facility is to remain in effect with respect to any Bonds), or (v) the date that all of the Bonds of a Series are defeased and this Indenture is discharged with respect to such Series of Bonds in accordance with its terms. Notwithstanding the foregoing, the Trustee shall not, under (i) and (iv) of the preceding sentence, surrender the Credit Facility (or, if applicable, the Liquidity Facility) to the Credit Provider (or, if applicable, the Liquidity Provider) for cancellation if the Credit Provider (or, if applicable, the Liquidity Provider) has failed to honor a properly presented draw under the Credit Facility (or, if applicable, the Liquidity Facility).

(b) Notwithstanding anything contained herein to the contrary, all provisions hereof regarding consents, approvals, directions, waivers, appointments, requests or other actions by the Credit Provider shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider were not mentioned therein (A) during any period during which there is a payment default under the Credit Facility, or (B) after the Credit Facility shall at any time for any reason cease to be valid and binding on the Credit Provider, or shall be declared to be null and void by final non-appealable judgment of a court of competent jurisdiction; provided, however, that the payment of amounts due to the Credit Provider pursuant to the terms hereof shall continue in full force and effect. The foregoing shall not affect any other rights of the Credit Provider.

All provisions in this Indenture relating to the rights of the Credit Provider shall be of no force and effect if there is no Credit Facility in effect and there are no Bank Bonds and all amounts owing to the Credit Provider and to the Liquidity Provider hereunder and under the Credit Agreement have been paid. In such event, all references to the Credit Provider shall have no force or effect.

**Section 20. Amendment of Section 5.11 of the Original Indenture.** Section 5.11 of the Original Indenture is hereby amended in its entirety to read as follows:

The Authority may, at its option, provide for the delivery to the Trustee of an Alternate Credit Facility for a Series of Bonds in substitution for the Credit Facility or Liquidity Facility then in effect for such Series of Bonds (a) at any time with respect to any Bonds bearing interest at a Weekly Rate or a Daily Rate, (b) on any Conversion Date, (c) on any Interest Payment Date with respect to a Series of Bonds bearing interest at a Monthly Rate and (d) on any date on which all Bonds bearing interest at a Long Rate are permitted to be optionally redeemed pursuant to Section 4.01(a). The Authority shall give written notice of its intention to exercise such option to the Trustee, the Remarketing Agent, the Liquidity Provider and the Credit Provider at least 45 days before the proposed effective date of such Alternate Credit Facility. On or before the date of the delivery of an Alternate Credit Facility to the Trustee, the Authority shall furnish to the Trustee (i) an Opinion of Bond Counsel substantially to the effect that the delivery of such Alternate Credit Facility to the Trustee is authorized under this Indenture and complies with the terms of the Indenture, (ii) an Opinion of Bond Counsel addressed to the Trustee stating that the delivery of such Alternate Credit Facility will not adversely affect the exemption of such Bonds from registration under the Securities Act of 1933, as amended, or that such Bonds have been so registered; (iii) an opinion of counsel to the Credit Provider addressed to the Trustee to substantially the same effect as the opinion delivered by counsel to the Credit Provider or Liquidity Facility in connection with the delivery of the Credit Facility or Liquidity Facility being replaced; and (iv) the written consent of the provider of the applicable Liquidity Facility or the Credit Facility, as the case may be, not being replaced if the Alternate Credit Facility will not be in substitution for both the Liquidity Facility and the Credit Facility. Such substitution may be made only if the existing Liquidity Facility may be drawn upon to pay the Purchase Price of the Series of Bonds that will be tendered, and the draw to pay the Purchase Price of such Bonds, if any, being tendered shall be made on such existing Liquidity Facility. Not fewer than 10 days prior to the proposed mandatory tender date, the Trustee shall mail (by first class mail) a written notice thereof to the Owners of such Bonds at their addresses as they appear on the registration books of the Trustee on the day on which notice is received by the Trustee from the Authority as provided above. Such notice shall set forth the information required by Section 4.06(j).

**Section 21. Amendment of Section 9.03 of the Original Indenture.** Section 9.03 of the Original Indenture is hereby amended in its entirety to read as follows:

Bonds delivered after the execution of any supplemental indenture pursuant to this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to any modification or amendment provided for in such supplemental indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his or her Bonds for the purpose at the Corporate Trust Office of the Trustee a suitable notation shall be made on such Bonds. If the supplemental indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority and the Trustee, to any modification or amendment contained in

such supplemental indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand of the Owners of any Bonds then Outstanding shall be exchanged at the Corporate Trust Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same interest rate and maturity and Series.

**Section 22. Amendment of Section 10.01 of the Original indenture.** Section 10.01 of the Original Indenture is hereby amended in its entirety to read as follows:

The Bonds, including a Series thereof, may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

(a) by paying or causing to be paid the principal of, premium, if any, and interest on the Bonds, including a Series thereof, as and when the same become due and payable;

(b) during any period in which Bonds bear interest at a Fixed Rate, a Long Rate or a Semiannual Rate, by depositing with the Trustee, in trust (pursuant to an escrow agreement), at or before maturity, money or Defeasance Obligations in the necessary amount (as provided in Section 10.03) to pay or redeem Bonds, including a Series thereof, then Outstanding; provided that in the case of a Long Rate Period or a Semiannual Rate Period, such payment or redemption must occur not later than the last Interest Payment Date with respect to the interest rate in effect at the time of such deposit; or

(c) by delivering to the Trustee, for cancellation by it, all of the Bonds, including a Series thereof, then Outstanding.

If the Authority shall also pay or cause to be paid all other sums payable hereunder by the Authority, including without limitation any compensation and expenses due and owing the Trustee hereunder, and all amounts due and owing to the Credit Provider and the Liquidity Provider, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture and all covenants, agreements and other obligations of the Authority under this Indenture shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon the Written Request of the Authority, and upon receipt of an Opinion of Bond Counsel acceptable to the Trustee, each to the effect that all conditions precedent herein provided for relating to the discharge and satisfaction of the obligations of the Authority have been satisfied, the Trustee shall cause an accounting for such period or periods as may be requested by the Authority to be prepared and filed with the Authority and shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the

Trustee shall pay over, transfer, assign or deliver all moneys or securities or other property held by it pursuant to this Indenture, which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption, to the Authority.

**Section 23. Amendment of Section 10.02 of the Original Indenture.** Section 10.02 of the Original Indenture is hereby amended in its entirety to read as follows:

Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds, including a Series thereof, or any portion thereof (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Section 4.03 or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04. The Trustee shall select by lot the Bonds of any maturity to be defeased in part pursuant to this Article X.

The Authority may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Notwithstanding anything herein to the contrary, in the event that the principal or interest due on a Series of Bonds shall be paid by the Credit Provider pursuant to the Credit Facility, such Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Authority, and the assignment and pledge of the Revenues and all covenants, agreements and other obligations of the Authority to the Bondowners of such Series shall continue to exist and shall run to the benefit of the Credit Provider, and the Credit Provider shall be subrogated to the rights of such Bondowners.

**Section 24. Amendment of Section 10.03 of the Original Indenture.** Section 10.03 of the Original Indenture is hereby amended in its entirety to read as follows:

Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, including all or any portion of a Series thereof, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be:

(a) Lawful money of the United States of America, in an amount equal to the principal of such Bonds and all unpaid interest thereon to their respective stated maturities, except that, in the case of Bonds which are to be redeemed prior to their

respective stated maturities and in respect of which notice of such redemption shall have been given as provided in Section 4.03 or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal of such Bonds, premium, if any, and all unpaid interest thereon to the redemption date; or

(b) Subject to Section 10.01(b) hereof, non-callable Defeasance Obligations, the principal of, premium, if any, and interest on which when due will provide money sufficient to pay the principal of, premium, if any, and all unpaid interest to their respective stated maturities, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal and interest become due, provided that in the case of Bonds which are to be redeemed prior to their respective stated maturities, notice of such redemption shall have been given as provided in Section 4.03 or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such funds to the payment of such principal and interest with respect to such Bonds.

**Section 25. Amendment of Section 11.07 of the Original Indenture.** Section 11.07 of the Original Indenture is hereby amended in its entirety to read as follows:

(a) All notices or communications herein required or permitted to be given to the Authority, the Trustee, the Remarketing Agent or the Credit Provider shall be in writing and shall be deemed to have been sufficiently given or served for all purposes by being delivered or sent by telecopy or by being deposited, postage prepaid, registered or certified mail, addressed as set forth below. The City shall be sent a copy of all notices delivered under this Indenture in the same manner it is delivered to the other parties listed below:

If to the Authority:

City of San José Financing Authority  
c/o City of San José  
Debt Management  
Finance  
City of San José  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, California 95113-1905

If to the Trustee:  
or Tender Agent

Wells Fargo Bank, National Association  
707 Wilshire Blvd., 17th Floor  
Los Angeles, California 90017  
Attention: Corporate Trust Department

and

Wells Fargo Bank Minnesota, N.A.  
Corporate Trust Operations  
N9303-121  
6th & Marquette Avenue  
Minneapolis, Minnesota 55479

If to the City:

City of San José  
Debt Management  
Finance  
City of San José  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, California 95113-1905

If to the Remarketing Agent:

Citigroup Global Markets Inc.  
390 Greenwich Street 2<sup>nd</sup> Floor  
New York, New York 10013  
Attention: Manager, Short Term Finance Group  
Telephone: (212) 723-5594  
Facsimile: (212) 723-8939

If to the Credit Provider:

Bank of America, N.A.  
CA9-193-13-17  
333 South Hope St., 13<sup>th</sup> floor  
Los Angeles, California 90071  
Attention: Government Credit Products

and

U.S. Bank National Association  
15910 Ventura Blvd. Suite 1712  
Encino, California 91436  
Attention: Ken Haber

The Liquidity Provider, if different from the Credit Provider, shall be sent a copy of all notices and other documents delivered under this Indenture to the Credit Provider.

(b) The Trustee shall give, as soon as practicable, written notice to any Rating Agency then rating the Bonds if (i) a successor Trustee, Tender Agent, or Remarketing Agent is appointed hereunder, (ii) an Alternate Credit Facility (including a

substitute Liquidity Facility) is delivered with respect to any of the Bonds, (iii) the Termination Date or the termination or expiration date of any Credit Facility, Liquidity Facility or Alternate Credit Facility (including a substitute Liquidity Facility) is extended, (iv) any Credit Facility, Liquidity Facility or Alternate Credit Facility (including a substitute Liquidity Facility) expires, (v) a Conversion Date occurs, (vi) if this Indenture or the Project Lease is amended or supplemented in any material manner, (vii) if the Bonds are paid and this Indenture defeased pursuant to Section 10.01, (viii) if the Bonds are accelerated pursuant to Section 7.02, (ix) if the Credit Facility (including any Liquidity Facility) or the documentation relating thereto is amended, modified or supplemented, (x) if the Bonds are redeemed in whole or in part pursuant to Section 4.01, or (xi) if the Bonds are subject to mandatory tender pursuant to Section 4.06(d) hereof, provided that the Trustee shall incur no liability for failure to give any such notice.

Any notice to the Rating Agencies shall be deemed to have been sufficiently given or served for all purposes by being delivered or sent by confirmed facsimile transmission or by being deposited, postage prepaid, in a post office letter box, addressed, S&P at 55 Water Street, New York, New York 10041, Attention: Public Finance, e-mail: [pubfin\\_structured@standardandpoors.com](mailto:pubfin_structured@standardandpoors.com); to Moody's at 99 Church Street, New York, New York 10007, Attention: Public Finance; and to Fitch at One State Street Plaza, New York, New York 10004, Attention: Public Finance, (or such other address or addresses as may have been filed in writing by a Rating Agency or Rating Agencies with the Trustee).

**Section 26. Effectiveness.** Except as otherwise amended hereby, the Original Indenture shall remain in full force and effect. This First Supplemental Indenture of Trust, and the amendments to the Original Indenture contained herein, shall become effective on October \_\_, 2010.

**Section 27. Counterparts.** This First Supplemental Indenture of Trust may be executed in counterparts.



IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture of Trust to be duly executed by their officers duly authorized as of the date first above written.

CITY OF SAN JOSE FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Julia H. Cooper,  
Assistant Director of Finance  
of the City of San José

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:  
Richard Doyle  
City Attorney

By: \_\_\_\_\_  
Chief Deputy City Attorney

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as trustee

By: \_\_\_\_\_  
Authorized Officer